

1 --IN THE COUNTY OF WASHINGTON

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3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

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4 VIRGINIA GAS AND OIL BOARD

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8 MAY 18, 2004

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12 APPEARANCES:

12 DENNIS GARBIS - PUBLIC MEMBER

13 BILL HARRIS - PUBLIC MEMBER

13 MASON BRENT - OIL & GAS REPRESENTATIVE/CHAIRMAN

14 DONALD RATLIFF - COAL REPRESENTATIVE

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16 SHARON PIGEON, COUNSEL FOR THE BOARD WITH THE ATTORNEY
16 GENERAL'S OFFICE

17 GARY EIDE, INSPECTOR/SITTING IN FOR BOB WILSON

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2 MASON BRENT: Good morning, everybody. We'll get
3 our meeting started. My name is Mason Brent. I'm filling in
4 today for Benny Wampler as Chairman since Benny couldn't be
5 here today. Before we get started, I'll ask our Board
6 members and staff to introduce themselves, starting with Mr.
7 Garbis.

8 DENNIS GARBIS: My name is Dennis Garbis. I'm from
9 Fairfax County. I'm a public member.

10 BILL HARRIS: I'm Bill Harris from Big Stone Gap, a
11 public member for Wise County.

12 SHARON PIGEON: I'm Sharon Pigeon with the office
13 of the Attorney General.

14 DONALD RATLIFF: I'm Donald Ratliff representing
15 the coal from Wise County.

16 GARY EIDE: And I'm Gary Eide. I'm an inspector
17 with the Division of Gas and Oil. I'm sitting in for Bob
18 Wilson who couldn't be here today. But Bob is the Director
19 pf the Division of Gas and Oil and is Principal Executive to
20 the staff of the Board.

21 MASON BRENT: Thank you. The first item on today's
22 agenda is a petition from Equitable Production Company for
23 creation and pooling of a conventional gas unit V-502025.

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1 This is docket number VGOB-04-0420-1284, which was carried
2 forward from April. We'd ask all parties interested in
3 addressing the Board on this matter to come forward at this
4 time.

5 JIM KISER: Mr. Chairman and members of the Board,
6 Jim Kiser for Equitable Production Company. Our witness in
7 this matter will be Mr. Don Hall. We'd ask that he be sworn
8 at this time.

9 (Don Hall is duly sworn.)

10 MASON BRENT: State your name for the record,
11 please.

12 BEN KENNEDY: My name is Ben Kennedy, land owner,
13 gas and oil owner.

14 JACK STANLEY: My name is Jack Stanley.

15 MASON BRENT: Okay, Mr. Kiser.

16 JIM KISER: Mr. Chairman and members of the Board,
17 this hearing was continued last month at the request of the
18 Kennedys and the Chairman. Mr. Wampler was present at that
19 hearing and the Chairman, and he asked that...there was a
20 dispute as to the size of the tract. I believe it was Tract
21 2 in our unit that Mr. Kennedy's tract made up. So, it was
22 asked that we do an actual survey of that tract to correct
23 and verify the acreage in that tract. We did put on all the

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1 testimony last month concerning the pooling...the formation
2 of this unit and the pooling of the unleased interest. But,
3 however, I guess Mr. Ratliff and Mr. Harris were not present.
4 I think Mr. Garbis and Mr. Brent was.

5 We can go through...back through some of the
6 highlights of that. Right now, though, we've got some...we
7 do have a copy of the survey that was done by Mr. Layman
8 Kendrick who is a certified surveyor. We do have some...as a
9 result of that, we have some revised exhib...revised plat,
10 revised Exhibit B, revised Exhibit B-2 and revised Exhibit B-
11 3, which we'll pass out now. I don't have too many copies of
12 the survey. So, I'm going to ask you to sort of share that
13 as you look at it. We do have one for Mr. Kennedy.

14 (Jim Kiser passes out the survey.)

15 JIM KISER: That's the survey of the Tract 2 that
16 we were asked to do by the Board last month. I guess at this
17 time, for the benefit of the two Board members who weren't
18 present at last month's hearing, I'll just go through
19 portions of Mr. Hall's testimony again and he can kind of
20 explain the changes that we have to the exhibits also.

21

22 DON HALL

23 having been duly sworn, was examined and testified as

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1 follows:

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DIRECT EXAMINATION

3 QUESTIONS BY MR. KISER:

4 Q. Mr. Hall, again, you're familiar with the
5 application that we filed seeking the establishment of the
6 unit and seeking a pooling order for this well, which was
7 dated March the 19th---?

8 A. Yes, sir.

9 Q. ---2004?

10 A. Yes, sir.

11 Q. Could you go over the lease and unleased
12 percentages within the unit again and explain these revised
13 exhibits and what's changed?

14 A. The leased percentage is 71.67%, and the
15 unleased percentage is 28.33% rounded off. The...last month
16 plat indicated and our exhibit indicated that...that Tract 2
17 consisted of 2.44 acres. The deed for that tract called for
18 4.2 acres. That discrepancy was why the Board requested us
19 to continue the hearing until this month so that we'd have an
20 opportunity to survey the tract more specifically, which we
21 have done since last month. The 2.44 acres that it plotted
22 out to be in actuality when it was surveyed turned out to be
23 2.47 acres in actual...rounded off, which is what, three-

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1 hundredths of an acre difference than what...what we had
2 plotted and what it surveyed.

3 Q. Could you explain any changes to B-2 or B-3?
4 I guess there really weren't any except for the percentages.

5 A. Just the percentage changed.

6 Q. And so did the---?

7 A. The acreages.

8 Q. ---increase in...the .03 acre increase in
9 the size of Tract 2 cause a slight decrease in the size of
10 Tract 3 and that's why we amended all of these exhibits?

11 A. That's correct.

12 MASON BRENT: You said the new survey rounded off
13 to 2. what?

14 DON HALL: It's 2.4687.

15 MASON BRENT: So 2....rounded off the 2.5?

16 DON HALL: 2.47.

17 MASON BRENT: Okay, 2.47.

18 DON HALL: Yeah. And the old Exhibit was 2.44.

19 MASON BRENT: Right.

20 Q. And, Mr. Hall, the depth of this well will
21 still be 5892?

22 A. Yes.

23 Q. The estimated reserves for the unit 400
24

1 million...450 million cubic feet?

2 A. Yes.

3 Q. And the dryhole cost and completed well
4 costs are still the same?

5 A. Yes.

6 Q. That would be dryhole \$230,741 and completed
7 well costs \$428,895?

8 A. Yes.

9 JIM KISER: That's really all I have at this time,
10 Mr. Chairman. If any of the Board members who weren't
11 present would like me to go over any of the testimony that
12 was taken last time, I'd be glad to.

13 MASON BRENT: Okay. Before I get to---.

14 BILL HARRIS: Mr. Chairman, I'm sorry---

15 MASON BRENT: Go ahead, Mr. Harris.

16 BILL HARRIS: ---just a quick question. The
17 percentages, and I don't have the other in front of me from
18 the last meeting, but 2 and 3, were those the only two that
19 changed percentages or did that shift percentages all the way
20 around.

21 DON HALL: Just---

22 JIM KISER: Just Tracts 2 and 3.

23 BILL HARRIS: Okay, thank you. Thank you. That's
24

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1 it.

2 MASON BRENT: Any other questions from the Board?

3 (No audible response.)

4 MASON BRENT: Mr. Kennedy, do you have anything?

5 BEN KENNEDY: I just have a question. When this
6 was surveyed, I had contacted Layman Kendrick's office and
7 told them I didn't want my property surveyed unless I was
8 present at the time. They assured me it wouldn't be surveyed
9 unless I was present to establish the corners; and the corner
10 that's in question is the Poplar found on...where it says
11 "199 feet and 6300". The Poplar actually is down about where
12 the found...the D in the found is because my line does not
13 run at the...they've got the angle wrong basically on this.
14 That's the one I had in question. They called me and said
15 they would run the...Ray's property, which is my uncle's.
16 But they never did call and contact me about surveying my
17 property at all. I asked to be present when that survey was
18 made so I could establish my corners. As far as I know, my
19 corners have never been established by Laymen Kendrick. If
20 they have, they haven't notified me of establishing any
21 corners for me. Well, actually I called them and told them
22 that when they came up to survey that I wanted to present
23 during the survey. I was never present during any survey.

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1 Actually, I didn't see them surveying this property. I do
2 know they surveyed Ray's, because he told me they surveyed
3 it. They surveyed plot nine and plot eight. They
4 established corners on 8 and 9 because there was a question
5 on that because of right-of-way issue on seven and also on
6 plot nine, they established the pointers on that one. But as
7 far as I know they...you know, nobody never notified about
8 surveying my property basically is where I stand on that
9 issue. I've been paying taxes on 4.2 acres for 24 years and
10 it's recorded in the Courthouse as 4.2 acres. I've been
11 paying 24 years on that. My corners haven't changed in that
12 time.

13 My uncle and I, this is between us, the property
14 line, and he's not in a disagreement where the property line
15 runs. But I still have an issue with this particular line
16 that says south 31 minutes 36 seconds or whatever, I don't
17 know how you read that 0 degrees east because it should be in
18 a different direction there. It shouldn't be running in that
19 direction. I still have an issue with this. That's where
20 I'm getting...losing property there.

21 If you'll notice...and I don't know if this what
22 they've got there. But the broken line that says, is that
23 E. T. or E-T or something? That's originally where they had
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1 my property running, which did not include my sheds down
2 there. I have a lot of sheds down there on the property
3 line, which they have backed it up, which will make it closer
4 to their well, by the way. I just...I knew the sheds were
5 wrong. I knew my property line was wrong to start with. So,
6 they've shifted everything down the hill some from what it
7 is. But still there's one line there that's in question that
8 I disagree with, and I did ask to be present when the survey
9 was done. So, that's, you know, basically where I stand on
10 that.

11 MASON BRENT: Mr. Kiser, would you like to respond?

12 JIM KISER: Well, addressing the 4.2 versus to the
13 2.4, we think there is probably a discrepancy there in the
14 deed and they just reversed those numbers. As far as Mr.
15 Kennedy being present when Mr. Kendrick's company did the
16 survey, I'd just ask Mr. Hall what his understanding of that
17 is.

18 DON HALL: My understanding of it was that they
19 ...that they contacted him and they were there in the
20 afternoon or late evening or a Saturday one.

21 BEN KENNEDY: Well, that's incorrect. If you'd
22 like to bring Ronnie Dingus up, I can have him testify or
23 something. I'm sure he would tell you that isn't true

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1 because he's the one I talked to. I didn't talk to any...I
2 talked to Ronnie Dingus from the surveyor's office and he
3 told me that he would come up on a Saturday and set my
4 corners sometime. But what he told when I requested I be
5 there and he said, "Well, I don't know if we can do that or
6 not because we don't work overtime and we quit at 4:30." I
7 don't get home until 4:30 in the afternoon. They were gone
8 everyday I got home. Even when they did my father's
9 property, he talked to them and everything during the day.
10 They were down there when I went by...I drive a school bus in
11 the afternoon and I teach school. I went by and their
12 vehicle was setting right there on the plot one...plat one
13 there that they've surveyed in Ray's. I came back and
14 parked. I was expecting to see them that afternoon and they
15 were gone. And that's...the next day I called him and he
16 said, "Well," said, "we can't work overtime and it would have
17 to be on a Saturday or we might could stay late one evening."
18 I said, "Well, I need to be there when you do this."
19 Basically, that's what I was told that he would do. I've
20 never seen any of the surveyors and never spoke to him
21 personally except by phone. The guy I talked to is a real
22 nice guy, Ronnie Dingus. I don't know him, but he sounds
23 like a good guy. He said...he assured me he would be there
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1 before they set any corners or anything, that I would be
2 present at that time. So, I just...I know there's a
3 discrepancy, I guess, in what he says and what I say. But I
4 think Ronnie could probably clarify that if he was here. I'd
5 be glad to---.

6 MASON BRENT: Well, I don't think that's...would be
7 necessary for the Board here. Do any of the Board members
8 have any questions of Mr. Kennedy or anyone else?

9 (No audible response.)

10 MASON BRENT: Do you all have anything further?

11 JACK STANLEY: Yes, I do. Of course, I'm sure Mr.
12 Kennedy has something else, too. But the only...this was not
13 the only issue it was my understanding and according to the
14 minutes that this thing was postponed until today. I'd like
15 to read from the minutes, if I may. Mr. Garbis---

16 DENNIS GARBIS: Correct.

17 JACK STANLEY: ---said "Mr. Chairman, I would also
18 like to say that I'm not prepared to really vote on this
19 issue...", this was last month, "...at this point. I would
20 like very much to see because I think you do have some
21 legitimate concerns...", this is talking about us, "...many
22 of which are not under purview to us to really decide. But I
23 would really like to have Equitable and yourselves to get
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1 together and try to amicably settle your differences the best
2 you know how because I think there's some opportunities that
3 maybe you could further negotiate. Maybe if you had an
4 objection to some of these items in here maybe you could
5 negotiate that away and maybe there could be another
6 opportunity where I think everybody would potentially benefit
7 from sitting down maybe one or two more times." Now
8 objection to the original granting of this petition is the
9 same today as it was then. That is to item C, "That the
10 applicant..." which is Equitable, "...has exercised due
11 diligence to locate each of the oil and gas interest owners
12 named herein on Exhibit B and as made a bonafide effort to
13 reach an agreement with all unleased parties as to pooling
14 their interest of this development operation."

15 When Mr. Gerbis, or Garbis, said that what he said
16 last week, I was very heartened. I thought well now here is
17 what I came for. I want to have some more...more
18 negotiations and that let me know either one of two things.
19 That the...that these people were going to negotiate with me
20 or contact me, which actually they didn't. I haven't heard
21 anything else from them, or they were so confident in their
22 dealings with this Gas Board that they were going to just run
23 roughshod over us and me and everybody that has any

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1 objections to this, that you all would go ahead and pass
2 this. Now, it's up to you as to what those two specific
3 items that I've just mentioned what's going to happen. It's
4 in your power to...and the way I understand this, it's in
5 your responsibility to look after the gas and oil and people
6 that are involved in this. Now, I would ask that you do what
7 is equitable and fair to all parties involved. I think
8 it...I think it behooves you to do that and to take into
9 considerations our feelings, our concerns and our questions
10 and not just because they're a big company and whatever and
11 just run roughshod over us. We have a lot of legitimate
12 concerns as stated in the last meeting, in the minutes, and
13 they have never been answered to this day.

14 MASON BRENT: Well, let me assure that we do care
15 about your concerns and we are not here to run roughshod over
16 anybody. But I would hope you would also understand that
17 this Board's jurisdiction is...is somewhat limited in a lot
18 of the areas that you've brought up. For instance, the whole
19 dispute over boundary issues is really not under our
20 jurisdiction. I think Mr. Wampler in an effort to help out
21 and try to facilitate some agreement there, one reason he
22 wanted to continue it was so that we could try to work on
23 that issue. I do recall some issues about names and

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1 addresses. I thought we had worked those out at that
2 meeting. Mr. Kiser, if you'd like to address any of that,
3 feel free to do so.

4 JIM KISER: Yeah, as far as I know we've got good
5 notice and names and addresses on everybody.

6 BEN KENNEDY: The Jean Hill, did you get a
7 notification back on her...a response back on Jean Hill?

8 JIM KISER: We got a green card, yeah.

9 DON HALL: We've got a lease from her.

10 JIM KISER: We've got a lease from her.

11 BEN KENNEDY: When did she sign that?

12 DON HALL: I don't have a date.

13 BEN KENNEDY: Where does she live?

14 DON HALL: Sandwich, Illinois. Roy and Jean Hill.

15 BEN KENNEDY: And you got...got a lease back on
16 them?

17 DON HALL: Yeah.

18 MASON BRENT: So, I think we cleared up last time
19 on the unknowns or wrong addresses.

20 BEN KENNEDY: Yes.

21 MASON BRENT: And the only other issue that I
22 recall dealt with the lease that you were working out with,
23 or trying to work out with, Equitable and that clearly, as we

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1 explained last month, is beyond our jurisdiction. We don't
2 get involved in negotiations for leases between...between
3 these producers and private parties.

4 BEN KENNEDY: I've got a couple of things I was
5 wanting to ask concerning the...if this has been permitted.
6 Has this well been permitted yet?

7 DON HALL: I don't think it has been applied for
8 yet.

9 BEN KENNEDY: Will we be notified when that occurs?

10 JIM KISER: Yes.

11 DON HALL: Yes.

12 BEN KENNEDY: Okay. And also, I was concerned with
13 the well cost. It has gone from \$346,280; in a month's time
14 it went up to \$428,895, which is a 23% increase in a month.
15 And that, of course, cuts into our profits if we do get
16 pooled. I was concerned about, you know, the increase on
17 that, what caused so much increase on that.

18 JIM KISER: Mr. Hall can address that. But it
19 won't cut into your profits unless you decide to directly
20 participate. It doesn't effect...the cost of the well
21 doesn't effect you unless you elect to participate either
22 directly or be carried. If you just end up being deemed to
23 have leased, or elect to be leased, then you go to a straight
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1 one-eighth royalty interest.

2 BEN KENNEDY: Well---.

3 JIM KISER: Do you understand that?

4 BEN KENNEDY: See, that...see, that's a dilemma
5 with the Board and us. They're not here to discuss leases.
6 But who do we discuss leases with---

7 JIM KISER: You discuss it with Equitable and Mr.
8 Wishoun did try to call you and your wife talked to him and
9 said that you weren't interested in talking to us; that you
10 just wanted to stop it.

11 BEN KENNEDY: No, she said...he said, "I'll call
12 back at 9:00 o'clock". Would you ask him to say if he didn't
13 verify he'd call back at 9:00 o'clock because I was gone?

14 MASON BRENT: Swear him.

15 JIM KISER: Let's swear him in.

16 (Keith Wishoun is duly sworn.)

17 BEN KENNEDY: Did you state to my wife you would
18 call back at 9:00 o'clock?

19 KEITH WISHOUN: Yes, I did.

20 BEN KENNEDY: Okay, did you call back at 9:00?

21 KEITH WISHOUN: I don't recall. But I do know I
22 called back the following evening and talked to her again.

23 BEN KENNEDY: Well, I was there again. And when
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1 you said you would call I was sitting at the phone waiting
2 for the call because I work late in the evening. I work
3 until 8:30 every night. My son is a mowing business and a
4 lawn care business and we do a lot of extra work. I worked
5 until about 8:30 doing a lot of weeding eating. As a fact,
6 we was mowing that evening. She said that I wouldn't be in
7 until about 9:00 o'clock. And you said, "I'll call him back
8 at 9:00 o'clock."

9 KEITH WISHOUN: The following evening it was after
10 9:00 when I talked to her again and you still hadn't made it
11 in or something to that effect.

12 BEN KENNEDY: So, you called again, but you never
13 did contact me.

14 MASON BRENT: Okay, well let's...let's move back to
15 your question and see---

16 BEN KENNEDY: Okay.

17 MASON BRENT: ---if we can get Mr. Hall to answer
18 your question about the change in the AFE.

19 DON HALL: I'm not sure there was a change in the
20 AFE.

21 BEN KENNEDY: Well, my letter...certified letter we
22 got is \$346,280.

23 DON HALL: Oh...yeah, okay. Yeah, that was...in
24

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1 the testimony month, though, it was \$428,000. We submitted a
2 new AFE with pipeline costs and so forth that wasn't in the
3 original ones.

4 BEN KENNEDY: Could I present this and go over the
5 plat just a little bit with you?

6 MASON BRENT: Yes.

7 BEN KENNEDY: One thing I was...came up with a
8 little new information since the last meeting that I wasn't
9 sure about. But on this plat here...I'm sorry. If you
10 notice the green, that's the ones that has got to go with the
11 lease to go ahead with. The red is the unleased properties,
12 18 and 20 I've got a question on. They might say they're
13 leased, but I say they're not because 20 has got eight leased
14 and eight unleased; 18 has got eight leased and eight
15 unleased. I don't know what part of that land is leased and
16 unleased. But you'll notice 7, 9, 8, 10, 12, 2 that borders
17 the property that's in question of where the well wants to go
18 in, where they want to put the well in. That's homes of
19 individuals that has lived there all their lives. We've
20 lived there all our lives. Of course, we don't want the
21 well. Twenty, no one lives on 20; there's no houses.
22 Eighteen, there's no one on 18, no houses. The people that's
23 immediately surrounding this well and the ones that's not

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1 wanting it, they border the property. Number 3 is a company.
2 Number 5, there's no house up there. I just had a question
3 on the distance from the well to my property line since it
4 has been shifted down the hill now. What...what is that
5 distance to your well?

6 DON HALL: I don't have an accurate measurement of
7 that. From your house to the property of the well?

8 BEN KENNEDY: Property line to your well.

9 DON HALL: Just looking at the typo with a 400
10 scale, it looks like it's probably about 500 feet.

11 BEN KENNEDY: How about from your well to the
12 property line number 9?

13 DON HALL: Probably 300-350 feet, roughly.

14 BEN KENNEDY: On number 9, there's a spring there
15 that my dad has used for 45 years that pumps water into his
16 house. I just want to make sure that this water is very
17 pure. It's to drink water. I carry drinking water from his
18 house to my house. I'm a little bit afraid of the well
19 damaging that water. So, I am concerned with that. Of
20 course, I went over my concerns. These gentlemen that
21 weren't here last week heard some other concerns I had...I
22 mean didn't hear some other concerns I had. But anyway I was
23 just wanting to see this plat. Notice that...I know the

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1 Board is here to represent the people and represent the ones
2 who won't...who they think should have the right to go ahead
3 and drill. Well, if you'll notice this, the ones that
4 actually live on the property, they don't want to drill. The
5 ones who don't live on the property, they don't care because
6 they're not going to be here. So, those are the ones that's
7 leased. Number 20 that's green has leased. He lives there.
8 But he doesn't border that property. I just wanted to bring
9 that out.

10 Does Equitable Resource own any property in this
11 plat at all? Do you all own in our property in the plat?

12 DON HALL: No.

13 BEN KENNEDY: Pardon?

14 DON HALL: No.

15 BEN KENNEDY: The last point I was wanting to bring
16 up too, is this thing right here. If you'll notice
17 something...I had my wife up here last week to hand these
18 things out...last month. Under the Code of Virginia Section
19 A there it says, "The Board, upon application of any gas or
20 oil owner, shall enter an order of pooling all interest and
21 drilling the unit for development and operation thereof."
22 They just admitted that they don't own anything here. I
23 don't think this application is valid due to the Code of

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1 Virginia there because it says that the pooling has to be
2 upon application of any gas or oil owner. They don't own
3 anything. So, is this a valid application?

4 Another thing, if you go down to C, "All pooling
5 orders entered by the Board pursuant to the division of this
6 section shall..." go down to seven, "...establish a procedure
7 with gas and oil owners who receive notice of the hearing and
8 who does not decide to become a participating operator may
9 either elect to sell or lease his gas." Now, that is not in
10 their application either. Their application that they
11 submitted to you does not have that statute...statute in it.

12 It says to "Assign or lease." Nobody has ever
13 asked me if I wanted to sell my gas and oil. If they had, it
14 may have been a different story. But now it says in the Code
15 of Virginia, it says that we should have the option to sell
16 or lease. Theirs...their application does not say sell or
17 lease. It says to "Assign". Well, there's a big difference
18 in assigning something and selling it to someone. Also,
19 back to A, now if Ray and Hazel wanted to come here and
20 submit an application to pool, they own the property where
21 the well is going to go in. But Equitable doesn't any
22 property here. I don't where they have the right to come in
23 and give us an application or submit an application.

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1 MASON BRENT: Let's let Mr. Kiser address all three
2 of these handouts.

3 JIM KISER: Yeah, I guess we'll take them one at a
4 time. You may have to go back and have him go over them
5 again.

6 But, Mr. Kennedy, I'll point out Virginia Code
7 Annotated 45.1-361.1, the Virginia Gas and Oil Act. It's the
8 definitional section, gas and oil owner definition means "Any
9 person who owns, leases, has an interest in or has the right
10 to explore for drill or operated a gas or oil well as
11 principal or as lessee." Equitable has leases from, what was
12 it 70---?

13 DON HALL: One percent.

14 JIM KISER: That makes us a gas and oil owner and
15 we have leases from 71.67% of the unit, which takes care of
16 your first concern.

17 Your second concern is 25% we have 71.68% leased.
18 So, that takes care of that concern.

19 What were your other ones?

20 BEN KENNEDY: Well, basically I disagree with your
21 acreage because 20 and 18 are not leased to you.

22 JACK STANLEY: In entirety.

23 BEN KENNEDY: In entirety.

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1 JACK STANLEY: 50% each one have been.

2 BEN KENNEDY: If it's not leased in its entirety,
3 is it considered leased...that total acreage leased or
4 unleased? Eighteen, 20 and 21, those three are not leased to
5 you.

6 JIM KISER: Well, there's portion of them that are
7 leased and portions that are unleased and that's all figured
8 into that total figure.

9 BEN KENNEDY: But, you know, I don't see that the
10 law...if I went to buy that property, I couldn't buy that
11 property if half the people said I'll sell to you and the
12 other half said I can't sell to you. So, I'm not sure that
13 that under legal terms would be considered leased.

14 JIM KISER: Well, as an owner of an undivided
15 interest in the oil and gas in that tract, they have the
16 right to lease that if they wanted to, or not lease it.

17 JACK STANLEY: We're not disputing that fact. But
18 the other half that has not leased is the one that we're
19 disputing. You're claiming that the tracts are leased in the
20 entirety. We're saying that 50%...you have 50% of the owner
21 is leased---.

22 JIM KISER: We're not claiming they're leased in
23 the entirety.

24

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1 JACK STANLEY: Well, you're saying "leased".

2 You're saying those tracts are leased.

3 JIM KISER: We're saying that there's a certain
4 undivided interest within that tract are leased and certain
5 aren't.

6 DON HALL: The exhibit---

7 JIM KISER: Look at the exhibit.

8 DON HALL: It lays it out.

9 BEN KENNEDY: But how...like I said, if I went to
10 buy that, you know, I can't buy the property if only half of
11 the people---

12 JIM KISER: You could buy whatever the undivided
13 interest of whatever those people wanted to it. You couldn't
14 buy all of it if they didn't want to sell it. But each...
15 each individual undivided interest owner has the right to
16 lease or alienate that property in anyway they want to.

17 BEN KENNEDY: Well, anyway, I...it's just 18 and 20
18 is a big plat of land there...tracts of land that...that, you
19 know, is half and half. It's divided half and half on there.
20 It also borders---

21 JIM KISER: And we've...we've clearly represented
22 that in the Exhibit B.

23 BEN KENNEDY: ---the property. And how about then
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1 section B down there where it says that you should sell...
2 offer to sell...to buy or sell...we have an option to
3 sell...that you gave us that option?

4 JIM KISER: We have taken the position and the
5 Board has taken the position that the sell or assign option
6 is to another lessee, a working interest owner and not a
7 royalty interest owner. In other words, if we were force
8 pooling another company, for instance, CNX or Columbia or
9 somebody else who had a lease in the area, then there it
10 would be an option available to them and not to a royalty
11 interest owner.

12 JACK STANLEY: Why is that?

13 BEN KENNEDY: The Board did that? You took out the
14 sell clause?

15 JIM KISER: No, they haven't taken out anything.
16 That's how it has been interpreted.

17 BEN KENNEDY: Well, see, the thing that bothers me,
18 it doesn't say that in the Code of Virginia. You need to go
19 back and rewrite the Codes. See, I'm basing my information
20 on these Codes here. If the Codes is incorrect, the Attorney
21 General's office or somebody needs to update these Codes. If
22 it says that...and it doesn't say anything about leasing here
23 on the A part upon---.

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1 JIM KISER: Sure it does.

2 BEN KENNEDY: ---from gas and oil owners. B
3 doesn't say that you can take out the sell. I mean, it
4 doesn't say down there someplace that the Gas Board decided
5 someplace abrit...or to decide to take away...take the sell
6 issue out of it. I mean, how do I know these things? I'm
7 not sure that I, you know...I go by what the law is saying to
8 me here. This is suppose to be the law. The law doesn't say
9 that anyplace that I've read in it. If there's an amendment
10 to it, it needs to be stated in this. These amendments, if
11 they're coming up by companies proposing, well, let's take
12 this out because this is what we want to do with it, well,
13 the amendment needs to be in this law here. According to my
14 information, this is the law. This is the law of Virginia,
15 isn't it?

16 JIM KISER: Yeah. Well, I just explained it to you
17 as best I can, Mr. Kennedy.

18 BEN KENNEDY: But---

19 JIM KISER: If you want to petition the legislature
20 to change it, that's your option.

21 BEN KENNEDY: Well, how...I don't know if it has
22 been changed is what I'm saying. It's not changed. It's
23 right here still on updated copy. It has not been changed

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1 that I know of. Maybe...maybe you've changed it or the
2 company has changed it. I don't know. But I don't see that
3 it has been changed.

4 MASON BRENT: Well, Mr. Kennedy, I don't believe it
5 has been changed. I think what Mr. Kiser was saying is that
6 it has been interpreted by those companies and this Board to
7 mean what he just described to you. That doesn't mean it has
8 been amended. It has not. If you...you know, if you take
9 exception to the interpretation, then...you know, then you
10 seek recourse through your legislature or however.

11 BEN KENNEDY: Well, you know, we...we were never
12 offered to the option of selling, straight out selling it to
13 them. It says there that we should have been offered that
14 option, "sell or lease".

15 JACK STANLEY: I think in a matter of importance
16 this right here, which this...you know, the Attorney General
17 lots of time he offers his interpretation of the law. We
18 have the representative there. I'd like to see his
19 interpretation of this.

20 MASON BRENT: Well, it's not a him. It's a her.

21 JACK STANLEY: Well, I know. But I...but I know
22 she---.

23 BEN KENNEDY: Terry Kilgore is the Attorney
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1 General.

2 JACK STANLEY: ---represents him.

3 JIM KISER: Well, let me also point out that that
4 option only becomes available to you after you're force
5 pooled. That's an option that's available to you under the
6 statute and it's not available until...it's an election
7 that's available to you after you've been force pooled. It's
8 not an...it's not an option that's available to you in the
9 lease negotiation process.

10 MASON BRENT: And we...we need, Mr. Kennedy, to
11 stick to the issue that's here today. That is the pooling
12 and not any issues that come thereafter.

13 JACK STANLEY: Well, you know, that that...
14 that's---

15 BEN KENNEDY: That is a pooling issue.

16 JACK STANLEY: This is my issue---

17 BEN KENNEDY: It's in their application for pooling
18 is what it was in.

19 COURT REPORTER: Okay, you all are going have to do
20 one at time.

21 JACK STANLEY: Okay, I'm sorry.

22 COURT REPORTER: You can't talk two or three at a
23 time, okay.

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1 JACK STANLEY: This is my...this is my issue of,
2 you know...you talk about the leases when I was talking. I'm
3 asking for the whole application to be declared null and void
4 because they have not made a bonafide effort to reach an
5 agreement. I don't care, you know, what's in the leases or
6 what it says. I really don't care. They have not made a
7 bona fide effort to reach an agreement with me. They are
8 seeking to force me to do...to do something that I do not
9 want to do. They're using this Board as Jessie James used
10 his horse and gun to rob and steal from us. Now, that's what
11 they're using. You can say what you want to and interpret it
12 which way you want to, but that's what's going on. It's
13 condoned thievery and robbery.

14 BEN KENNEDY: You give me---.

15 JIM KISER: And I'll repeat, Mr. Chairman, that
16 it's our opinion that we have made a bonafide effort to lease
17 all these people and that the changes they want us to make to
18 the lease basically guts the lease and makes it completely
19 ineffective and it's of no use to us. So, you know, there's
20 nowhere to go with it.

21 JACK STANLEY: And I'll repeat again that you only
22 asked me...you only came to me one time and said, "You either
23 lease this or you will be force pooled and all your money and
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1 proceeds that you would get from this well will go into
2 escrow and you will have to sign the lease in order for you
3 to get anything from them." So, I have been lied to. Not
4 only me being lied to, we have all been lied to and the
5 people that have signed this thing in talking, we have
6 discovered they were coerced, were threatened with court
7 actions and stuff from this company. Now, this is what my
8 objections to this application is. They have not been
9 upright and straightforward with us. I have objections to
10 the well, but if they had approached me the right way and
11 talked to me the right way, I feel like we could have worked
12 something out. Without repeating myself, they are using you
13 all.

14 JIM KISER: Mr. Wishoun, I'll ask you again, and
15 remind you that you're under oath, did you threaten them in
16 anyway?

17 KEITH WISHOUN: No.

18 JIM KISER: Did you say...did you say their money
19 would be put in escrow? Why would it be put in escrow?

20 KEITH WISHOUN: If you don't care, Mr. Stanley, did
21 I not ask you...did you not tell me that if I did not meet
22 your terms, you would not sign the lease, period?

23 JACK STANLEY: I...I said that...that there was
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1 some terms that I wanted met. You also did tell me...I asked
2 you what happened. What would happen if I did not sign the
3 lease and you said, "Well, it would be put in...the funds
4 would be put into escrow and in order for me to get my...what
5 money would come out of it, then I would have to sign the
6 lease." I was fully prepared to let it go on into limbo in
7 eternity. My wife and I had talked about this and said,
8 well, you know, I'm not going to...I'm not going to sign a
9 lease. If it goes into escrow whatever, you know, we'll just
10 wait.

11 BEN KENNEDY: Keith, did you not also tell me that
12 it would be put into escrow and that the only we could get it
13 would be to sign the lease?

14 KEITH WISHOUN: I don't recall that. If I did tell
15 you all that, that's my mistake. But---

16 BEN KENNEDY: You told me and my wife that.

17 DON HALL: What tract are you?

18 BEN KENNEDY: Daddy, did he---?

19 MR. KENNEDY: He told me the same thing.

20 JACK STANLEY: I'm Tract 12...12 and 10.

21 AUDIENCE: He told me the same thing.

22 BEN KENNEDY: Yeah, I've got 15.

23 JIM KISER: Well, let me...if he said any of that,
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1 let me clear that up. The only tract in this well that will
2 be put into escrow will be Tract 18. Are there any unknowns?

3 DON HALL: That's the one that there's conflicting
4 claim to.

5 JIM KISER: And Tract...there will be a small part
6 and that's because there's conflicting claims to the
7 ownership of the oil and gas. There will be a small in...and
8 any of the unknown interest, which will include small parts
9 of Tract 20 and a small part of Tract 21. That's the only
10 money from the proceeds from this well that will go into
11 escrow, once again in accordance with the statute.

12 BEN KENNEDY: And we established that last time. I
13 think that was established at the last meeting because that
14 was a question.

15 JIM KISER: Okay, thank you.

16 BEN KENNEDY: Back to the bonafide efforts that
17 this gentleman over here brought up to try to reach an
18 agreement. Keith, you did say that you called me. Did you
19 call Benny and Verna Smith and talked to them?

20 KEITH WISHOUN: Yes.

21 BEN KENNEDY: Did you call Lilton Estep and talk to
22 him?

23 KEITH WISHOUN: (No audible response.)

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1 BEN KENNEDY: Keta Estep.

2 KEITH WISHOUN: Mr. Estep informed the last time I
3 seen him that he was not going to sign a lease.

4 BEN KENNEDY: Well, I was...I was representing all
5 of these. I stated that at the last meeting. All these
6 people I'm representing. Wayne Stanley?

7 KEITH WISHOUN: No.

8 BEN KENNEDY: Anthony Stanley?

9 KEITH WISHOUN: No.

10 BEN KENNEDY: Allen Kennedy?

11 KEITH WISHOUN: No.

12 BEN KENNEDY: Audra Kennedy?

13 KEITH WISHOUN: I don't think so.

14 BEN KENNEDY: Anthony Stanley? Did I say Anthony?

15 JACK STANLEY: Not yet.

16 BEN KENNEDY: Anthony Stanley?

17 KEITH WISHOUN: If you're representing them, then I
18 contacted you. Doesn't that cover that?

19 BEN KENNEDY: You didn't contact me.

20 KEITH WISHOUN: Well, your wife kind of...she let
21 me that your position was set.

22 BEN KENNEDY: But you said you would call back at
23 9:00 o'clock and I was ready to talk to you.

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1 KEITH WISHOUN: That was the night before.

2 JIM KISER: Okay, so I guess our big issue now is
3 did we make a bonafide effort? So, what is a bonafide
4 effort? Did you contact all of these people at least
5 once---?

6 KEITH WISHOUN: Yeah.

7 JIM KISER: ---throughout the course of the process
8 of trying to get this unit leased, and your answer to that is
9 what?

10 KEITH WISHOUN: Yes.

11 JIM KISER: Okay. And did all of them who haven't
12 leased, most of them who are represented by Mr. Kennedy, who
13 is obviously adamantly against it, tell you that they didn't
14 want to lease?

15 KEITH WISHOUN: Yes.

16 JIM KISER: Mr. Kennedy, if we come back to you
17 with the same lease we came to you because your demands are
18 demands that are not...if we take them out of the lease, we
19 can't drill the well, are you going to sign the lease that
20 we've offered you the first time?

21 BEN KENNEDY: My question is if I was going to sign
22 the lease the first time, why did I not sign it the first
23 time if you made an effort to come to my agreements?

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1 JIM KISER: We did make an effort. We cannot meet
2 your demands otherwise we can't drill the well. Do you not
3 understand that?

4 BEN KENNEDY: I asked...asked for a safety issue
5 there, a damage clause, because the well is right close to my
6 house, the closest one on the plat. I asked for a damage
7 clause. My house may never get damaged. I don't know. But
8 I sit on a cliff. The well is underneath the cliff. The
9 cliff could fall down when the well starts vibrating and all
10 of this start happens. I'm concerned that I may have some
11 damage to my house.

12 JIM KISER: And you'd have a right to sue us in
13 Dickenson County Circuit Court. That would be your remedy.
14 It's a civil remedy.

15 BEN KENNEDY: Well, the remedy---

16 JIM KISER: I would like to point out too, that
17 we've worked it out so that there won't be any surface
18 disturbance as far as access road or anything except on Tract
19 1.

20 BEN KENNEDY: The problem is Court's good for you
21 because you get paid to be here today. I don't. I've taken
22 a day off from work this month. I took a day off last month.
23 I've got 300 and some sick days accumulated. I've worked 30

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1 years. I get 12 days a year. You can tell I don't miss work
2 much. This is very important to me. You take it so lightly.
3 You don't---

4 JIM KISER: No, I don't take it lightly at all.

5 BEN KENNEDY: You don't...you think everything can
6 be settled in Court. Well, Court is a good place for you.
7 It's not a good place for me. It cost me money. It doesn't
8 cost you a penny! It doesn't cost your company a penny!

9 MASON BRENT: Mr. Kennedy...Mr. Kennedy and Mr.
10 Kiser, let's just slow up here. I think---

11 BEN KENNEDY: Can I speak two minutes and I'll shut
12 up and not say anything else?

13 MASON BRENT: Well, I think first we need to answer
14 Mr. Kiser's question.

15 BEN KENNEDY: Okay.

16 MASON BRENT: He has presented you with a lease and
17 he has asked you would you sign it?

18 BEN KENNEDY: The original lease, no.

19 MASON BRENT: So, you would not sign the---?

20 BEN KENNEDY: The original lease, I will not sign.

21 MASON BRENT: ---lease that he has presented?

22 BEN KENNEDY: No, I will not.

23 MASON BRENT: Okay. Okay.

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1 BEN KENNEDY: I've got a little speech here about
2 two minutes, then that's all I've got to say and I'll quit.
3 You know, last month I brought up safe concerns about my
4 house being within 500 feet of the gas well. Of course, I
5 brought up the jury awarding 270 million dollars for a
6 lawsuit against Equitable, which they appealed and they
7 settled out of Court because of an explosion in Kentucky.
8 That's what got my initial concern about safety issues
9 because I have a water well in my house, in my basement. I'm
10 concerned greatly with the safety issues. My house was built
11 in 1950. I haven't had any problems in all of these years,
12 54 years. Of course, I haven't lived there 54. But the
13 house has had no problems. I've lived there 24 years. But
14 we've had no problems with that gas well...I mean, that water
15 well. Now, with the gas well going in I do have concerns
16 with it. I don't want to get blown up like the guy in
17 Kentucky even though the company settled out of Court. The
18 thing with this is that I expected them to at least call and
19 offer me...offer to vent my gas and my well...a water well.
20 I wanted them to vent my water well. I also wanted them to
21 put a monitor on that water well so that it would read the
22 gas content if there's any there. That way I'd have some
23 type of warning. If something happened, I'd get out of the
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1 house and my family wouldn't get blown up.

2 To sign the lease for a \$1 is not worth my life.
3 That's all I get out of that lease is \$1. I'm not going to
4 blow up my family for a \$1. I won't blow up my family for
5 \$5,000 or a million dollars. My concern is getting blown up.
6 They have had other explosions. Wise County has had
7 explosions, gas pipelines. There will be pipelines running
8 close by my house too. So, I am concerned with safety. I
9 expected if they wanted to make a bona fide effort with me,
10 they could have called and offered to vent my well, put a
11 monitor on it and I still think that should be done if the
12 pooling is issued.

13 Again, I just think this application should be
14 denied because, you know, we live there. We live close. The
15 ones that's living there, they don't want it. The ones who
16 don't live there, it's fine with them. The only person
17 living on that plat of land that wants that is Ray and Hazel
18 and Beulah and Clyde Mason. No one else lives within that
19 region there. I just think, you know, that...I know the
20 thing with telling the people your money will be put in
21 escrow to all may not mean anything. But everybody I've
22 talked to that's the reason they signed the lease. They
23 thought well if I they don't sign it I'm going to loose what
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1 little money I could get out of it. I just don't think the
2 leases are valid.

3 I do appreciate your time. I know this is to you
4 all it may not be something that important. But to me where
5 I live on top of this water well, I could get blown up. It
6 is important to me. I just don't think that, you know, the
7 pooling should be allowed and it should be automatic for
8 these companies because they should be held accountable.
9 They should tell the truth to people about the possibilities
10 of explosions. They should tell the truth to people about
11 how the money will actually be dealt out and not have leases
12 signed under duress. I just, you know...that's my opinion.
13 I appreciate your time. You all have been very good last
14 time to listen to us and you've been very cordial this time
15 to listen to us.

16 I know some things...see our confusion here is we
17 don't know what the Board...the last time I didn't know your
18 function exactly. Some things I came up probably goes more
19 to the permit hearing concerning safety issues, which I'll be
20 back. I'll shall return. But the thing is it's hard to talk
21 about their lease with you all and our concerns without
22 getting into the lease because it's a big part of what we're
23 doing here. I know you all aren't...don't have any control
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1 over the leases. But I do appreciate your time. I'm glad
2 we've got the opportunity to express ourselves and let the
3 company know that we don't appreciate them. We don't want
4 them. They're not welcome in my...on my property.
5 Basically, that's it. Thank you.

6 MASON BRENT: Thank you. I think can speak for the
7 Board in saying that we do care or we wouldn't be taking our
8 time to be here serving on this Board. So, we do care. We
9 appreciate you all taking the interest and time to come in
10 and let us know of your concerns and help us try to address
11 them. Mr. Kiser, would you like to address his final
12 comments?

13 JIM KISER: Well, he is right, the safety issue is
14 more of a permitting issue in, you know, whether or not our
15 casing program, you know, will be sufficient to provide him
16 with the protection that he wants. I guess it will be
17 addressed at that time. But, you know, we obviously feel
18 that it will be sufficient. We certainly don't want any
19 safety issues or anything to happen to Mr. Kennedy's house or
20 his family.

21 Other than that, we'd ask that the application be
22 approved as submitted with the revised plat and revised
23 exhibits, also making the survey that we had done an Exhibit
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1 to the hearing as presented.

2 MASON BRENT: Okay, let me first see if any Board
3 members have any further questions or comments?

4 DENNIS GARBIS: Mr. Chairman, I have some comments.
5 Notwithstanding my comments at the last month, I was hoping
6 that we would have some degree of ability between the sides
7 to get together. What I see here is that it appears that
8 your side may not be as willing to be reasonable, in my
9 opinion...in my humble opinion. Keep in mind, as I said last
10 month, that I've been sitting on this Board for ten years.
11 There have been numerous cases where people have come and
12 there have been some disagreements. I think at the end of
13 the day, as far as I know, there have been relatively few, if
14 any...I can't recall any, somebody can help me out with this,
15 there was that vocal of a disagreement amongst the parties.
16 There just really haven't been that many. Now comes this
17 case. So, I'm just...I just...I just have to put things in a
18 ten year prospective. I'm just wondering if maybe perhaps
19 you might be a little bit over zealous in your...in your
20 position.

21 Keep in mind that when the legislators formulated
22 these laws, their concern was that not only do we protect
23 peoples' rights, but at the same time we have to proceed with
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1 the business of getting this gas so we can get...you know, so
2 we can advance the gas industry quite frankly. I think we
3 all know the price of gas at the gas station. We have an
4 energy crunch. To have the ability for somebody basically
5 ...and I'm not saying in this case, the ability hold hostage
6 the whole potential of advancement of our...of our industry.
7 I think that was foremost in the minds of the...you know,
8 the legislators. So, we...we have to balance things out. I
9 think you have some legitimate concerns. I think those need
10 to be addressed. I think part of those can be addressed in
11 the permitting process.

12 At the same time, from Equitable's standpoint, I
13 would have hoped that there would have been more of an effort
14 to get with the parties to...you know, to maybe diffuse the
15 situation so that we have some, you know, better feelings.
16 We've all got to live together. You're not going to
17 away...they're not going away. We all have to at the end of
18 the day, maybe not get a complete a 100% agreement, but if we
19 can be 75% there, compromise gets us a long way.

20 I don't know that I've seen in either side a
21 willingness to, number one, get together and be...I don't how
22 much compromising there is. At the end of the day, we need
23 that well. We've got to have...that gas has got to come out.

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1 We need that. I would hope that there would be someday, and
2 I'm not sure of the best way to get us to that, everybody can
3 get together and maybe not be at a 100% in agreement, but at
4 least get 75% there and maybe satisfy some of your safety
5 concerns and at least talk amongst each other so that we
6 can...we can compromise and get this well...this well where
7 it needs to be.

8 So, how are we going to do that? So, I'm open to
9 suggestions. We've talked enough. Now, it's time for
10 action. So, let's go. What are we going to do?

11 JIM KISER: We'll be glad to continue to try work
12 things out with them even after this application is approved,
13 as we do in all instances. I mean, we can go back and you
14 can look probably 30 or 40% of our supplemental orders that
15 are the order that's done after the election period is
16 expired and the Board order has been issued, where we dismiss
17 people because we've obtained a voluntary leases from them
18 after all of this is done. We'd rather work under a
19 voluntary lease.

20 (Ben Kennedy's father discusses out loud with his
21 son.)

22 MASON BRENT: Excuse me.

23 JIM KISER: But we can't negotiate with somebody
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1 who is going to make demands that don't allow us to be able
2 to do what we...what we have to do, which is drill the well.

3 DENNIS GARBIS: Mr. Kennedy, here is...here is my
4 suggestion, Mr. Chairman, I suggest that, and just my
5 suggestion, I guess we could let him put in a form of a
6 motion, but I would like to see this continued for one month.

7 I would like to see there be another attempt for not just
8 Mr. Kennedy, but all the parties that are involved in this
9 that have such...you know, such big disagreement. I would
10 like to see one more effort to try to get together and at the
11 time ...if next month, if there's...if there's not a better
12 harmonious relationship, then we need to move forward and
13 approve it.

14 JIM KISER: And I'm going to repeat my request that
15 it be approved as submitted with the revised exhibits this
16 month.

17 BEN KENNEDY: I was going to suggest that we could
18 get together and maybe come up with something and have more
19 input on the lease when it's given to us.

20 DENNIS GARBIS: Well, the lease, we're not...we're
21 not going to be involved.

22 BEN KENNEDY: Well, I mean, that's how we come to
23 an agreement on.

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1 DENNIS GARBIS: You've got...you've got to get
2 together with those guys and negotiate that lease.

3 BEN KENNEDY: Yeah, that's what I mean, with them.

4 JIM KISER: That's what I'm saying. That's all
5 there's left to negotiate. You don't have any jurisdiction
6 over that. And I'm telling you, it's not going to happen.
7 I'm telling you what's going to happen, when we get this
8 order, they're going to appeal it to the Circuit Court of
9 Dickenson County. It's a waste of time to continue it
10 another month.

11 JACK STANLEY: Well, with the---.

12 BEN KENNEDY: How do you---?

13 JACK STANLEY: With an attitude like that, you
14 know, I'm open to negotiations.

15 JIM KISER: No, you're not.

16 JACK STANLEY: Yes, I am. You can't say that I'm
17 not open to negotiations. I have...I have been...like I
18 said...stated previously.

19 JIM KISER: You're going to sign the lease as we
20 presented it to you, Mr. Stanley?

21 JACK STANLEY: No, I am not. That is not an
22 negotiation. That is a coercion and being forced. If that's
23 your best definition of being a negotiator, then I suggest
24

1 you go back to school.

2 JIM KISER: So, what are you going to negotiate?
3 Taking out the granting clause, is that what you want?

4 JACK STANLEY: No, not necessarily. We'll...I'm
5 not going to set here on this Board and open negotiations to
6 the public forum, but I would be open negotiations.

7 MASON BRENT: Okay, well, I'm going to have to slow
8 this down here. We're back to lease issues. Lease issues
9 are beyond the jurisdiction of this Board. So, we really
10 can't be considering what goes on between you two guys...all
11 three guys in negotiations. We've got to focus on the issue
12 at hand here. If any other Board would like to respond or
13 have any question...respond to Mr. Garbis or the parties here
14 or any other questions.

15 DONALD RATLIFF: Mr. Chairman.

16 MASON BRENT: Mr. Ratliff.

17 DONALD RATLIFF: I would like to ask Ms. Pigeon, is
18 the conflicts concerning the issues that's before the Board
19 within our jurisdiction that has not been resolved?

20 SHARON PIGEON: No.

21 JIM KISER: Yeah, therefore, it would be our
22 position his motion is not a valid motion.

23 MASON BRENT: Well, I don't believe Mr. Garbis made
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1 a motion.

2 JIM KISER: Oh.

3 MASON BRENT: He was just...I think he was
4 exploring.

5 JIM KISER: Okay.

6 MASON BRENT: I don't want to speak for him. But I
7 think he was exploring that avenue.

8 DENNIS GARBIS: Yeah. I was putting...attempting
9 to put something out on the table that we could get some sort
10 of---

11 BEN KENNEDY: Well, it's hard to negotiate because
12 they're unwilling to do so.

13 MASON BRENT: Yeah.

14 BEN KENNEDY: They haven't contacted us and haven't
15 made any effort to do so. I was willing to negotiate. I
16 never did tell Keith that I wouldn't sign the lease. I told
17 him he could bring it back with these clauses and then we'll
18 talk about it.

19 MASON BRENT: Okay, but here, again,---

20 BEN KENNEDY: Yeah, I know it's a lease issue.

21 MASON BRENT: ---I think you're pretty clear now
22 that that's...that's beyond us.

23 SHARON PIGEON: And as it should be, just to
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1 interject that. You wouldn't want that for a Board to be a
2 party to lease negotiations.

3 BEN KENNEDY: How---?

4 JACK STANLEY: Well, I'd say---.

5 BEN KENNEDY: ---do you all separate the lease from
6 pooling, though.

7 JACK STANLEY: I just---.

8 BEN KENNEDY: I mean, that's the reason we didn't
9 ...didn't sign because of the lease. But then, again, we're
10 being forced to go with the lease because their lease is not
11 okay and then you're going to present us a lease, right? So,
12 lease is the issue.

13 MASON BRENT: Well---.

14 BEN KENNEDY: That's my total concern there.

15 JACK STANLEY: I can't---.

16 BEN KENNEDY: How do you separate the lease from
17 your action---?

18 JACK STANLEY: From the bonafide---.

19 BEN KENNEDY: I don't understand how we can
20 separate the two.

21 MASON BRENT: Maybe we can get Ms. Pigeon just to
22 or Mr. Kiser to lay for you what happens step by step.

23 First, you've approached them to lease and not been able to

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1 work something out there. The next step is where we are here
2 right now.

3 JIM KISER: Right. And that's why we have the
4 statute. Then at this point, if the application is approved,
5 the Board will submit an order to the Board. Ms. Pigeon will
6 review it. Mr. Wampler and Mr. Wilson will sign it. At that
7 point, we'll send it...they'll record it and send it to us.
8 We'll send a copy of that to you with an election letter
9 which explains your statutory election options, which will be
10 to directly participate, to lease or to participate as a
11 carried interest. You have thirty days from the receipt
12 of...or thirty days from the date the order is recorded to
13 make your election as to which of those options you want.
14 Essentially your rights are controlled by the Board order
15 rather than the voluntary oil and gas lease.

16 JACK STANLEY: Well, I just want to state for the
17 record that I'm...I'm in disagreement with Ms. Pigeon on...on
18 the hearing notice that, you know...I think that my...
19 irregardless of the lease, my objections that a bonafide
20 effort to reach---

21 BEN KENNEDY: (Inaudible).

22 JACK STANLEY: ---an agreement, and that's not, you
23 know...that doesn't necessarily mean that the lease with all

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1 of the parties. I just...I just can't see that.

2 BEN KENNEDY: The application---

3 MASON BRENT: Well...and I appreciate your
4 comments. I'm sure the Board will consider that.

5 BEN KENNEDY: The application is the one that
6 mentioned the bonafide lease. So, we didn't bring it up. I
7 mean, not the bonafide lease, but the bonafide---

8 JACK STANLEY: Effort.

9 BEN KENNEDY: ---effort to make an agreement with
10 us, that was in the application. That has nothing to do with
11 the lease. I don't think that has been made.

12 JACK STANLEY: And that is my objection in its
13 entirety to the application, that a bonafide effort has not
14 been made to reach an agreement as stated in the application.

15 MASON BRENT: Well, to the Board, Mr. Kiser has
16 asked for approval of this application.

17 DONALD RATLIFF: Move to approve, Mr. Chairman.

18 MASON BRENT: We have a motion to approve. Do we
19 have a second?

20 BILL HARRIS: And I'll second.

21 MASON BRENT: I have a second. All in favor,
22 signify by saying yes.

23 (All members signify by saying yes, but Dennis
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1 Garbis.)

2 MASON BRENT: Opposed, say no.

3 DENNIS GARBIS: No.

4 MASON BRENT: Okay, you have approval. I thank
5 you, gentlemen.

6 GARY EIDE: Don, do you have another copy of Mr.
7 Kennedy's survey? Did you hand out a copy of the survey of
8 his property?

9 DON HALL: Yeah.

10 GARY EIDE: I didn't get a copy of that.

11 DON HALL: We didn't have but about three.

12 JIM KISER: We can get you one.

13 MASON BRENT: We're going to take a five minute
14 break.

15 GARY EIDE: Yeah, we'll need one for the file.

16 DONALD RATLIFF: Do you need this survey plat?

17 (Off record.)

18 MASON BRENT: Okay, we're going to get started
19 again. Just as a matter of a little housekeeping for those
20 that are here. We're going to move around the agenda a
21 little bit here to accommodate Mr. Kiser. We're going to
22 next hear agenda item number two. But then we will move on
23 to items 14 and 15, which are also Equitable matters. Then

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1 we'll turn the floor over to Mr. Swartz and company.

2 So, now I will call...the next item on the agenda
3 is a petition from Columbia Natural Resources, LLC for
4 creation and pooling of a conventional gas unit 825398. This
5 is docket number VGOB-04-0420-1286. This was carried forward
6 from last month.

7 JIM KISER: Mr. Chairman and members of the Board,
8 Jim Kiser on behalf of Columbia Natural Resources, LLC. Our
9 witnesses in this matter will be Mr. Lynette Green and Mr.
10 Robert Kennon. We'd ask that they be sworn at this time.

11 (Witnesses are duly sworn.)

12 MASON BRENT: Let the record reflect there are no
13 others.

14 JIM KISER: Now, before we get into the testimony
15 for today's hearing, we continued it last month because Tom
16 Pruitt, who is a lawyer there in Grundy, had sent Mr. Wilson,
17 and then subsequently Mr. Wilson to us, a letter asking us to
18 address several concerns. One was whether or not, I guess
19 it's Tract 3 in the unit, the Anderson/Elswick Estate or the
20 Anderson/Elswick Heirs, had all been properly notified. We
21 determined that it was in our best interest to do a renot...
22 to continue it and do a renotification, which we have done.
23 You should have a copy of the affidavit of mailing and

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1 publication and tracking sheet, which will show that we
2 notified an additional it's either 22 or 24 heirs. We have
3 all the green cards back on that.

4 His other big concern was that he...he was unsure
5 that a lease...on our Exhibit B we do show those interests as
6 being leased. A point of fact being that it's a...they are
7 leased and Equitable Production Company is the oil and gas
8 lessee. They have in turn executed a format agreement with
9 the applicant here to develop this property. So, what he
10 didn't understand was, he felt that meant that they were
11 leased to CNR when he knew that that was not actually the
12 fact. I have talked to him about that. He has sent me a
13 letter today that I have passed out to you all saying that
14 he's okay with the hearing going forward as long as his
15 clients, and he doesn't represent all of those heirs, just a
16 couple of them, are not subject to any, as he calls them,
17 statutory penalties, by which he means the two and 300%
18 penalty for being a carried interest. A point of fact,
19 again, his clients are not subject to the jurisdiction of the
20 Board because they are, in essence, leased to CNR via the
21 format with Equitable.

22 That being said, he has represented to me, and I
23 think you can see in that letter, that he is fine with

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1 everything. We do have proper notice now. So, we would like
2 to, if there's not any questions, to go ahead and proceed
3 with our testimony.

4 MASON BRENT: Proceed.

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LYNETTE GREEN

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. KISER:

Q. Ms. Green, would you state your name for the Board and who you're employed by and in what capacity?

A. I'm Lynette Green. I'm employed with Columbia Natural Resources as a senior land representative.

Q. And you have previously testified before this Board and your qualifications as a expert in land matters have been accepted as such?

A. Yes.

Q. And are you familiar with the application that we filed seeking a drilling unit in pooling any unleased interest for CNR well number 825398, which was dated March the 19th, 2004?

A. Yes.

Q. And does CNR own drilling rights in the unit involved here?

A. Yes.

Q. And does the proposed unit as depicted at Exhibit A, that being the plat to the application, include

1 all acreage within 1250 foot radius of the proposed well?

2 A. Yes.

3 Q. Now, prior to filing the application, were
4 efforts made to contact each of the respondents in the unit
5 and an attempt made to work out a voluntary lease agreement?

6 A. Yes.

7 Q. Okay, now what is the interest that CNR has
8 under lease within the unit at this time?

9 A. 93.09%.

10 Q. And are you familiar with the ownership of
11 drilling rights of parties other than CNR underlying this
12 unit?

13 A. Yes.

14 Q. And what percentage remains unleased?

15 A. 6.91.

16 Q. Okay. And that represents actually...that
17 represents the railroad, which is Tract 2, and we are
18 anticipating at some point the future obtaining a voluntary
19 lease from them? That is under negotiation?

20 A. Yes. Yes.

21 Q. It just takes a long time, right?

22 A. It's in our mapping department.

23 Q. And then the other party, that 6.91% that's
24

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1 unleased is an undivided portion of Tract 3 that's owned by
2 Donald and Cynthia Williams?

3 A. Yes.

4 Q. And we've attempted on numerous occasions to
5 get a lease from them and been unable to do so?

6 A. Yes.

7 Q. Okay. Are all the unleased parties set out
8 at Exhibit B-3?

9 A. Yes.

10 Q. Okay. And we don't have any unknown
11 interest owners within this unit, is that correct?

12 A. That's correct.

13 Q. In your professional opinion, was due
14 diligence exercised to locate each of the respondents named
15 in Exhibit B?

16 A. Yes.

17 Q. And are the addresses out in Exhibit B to
18 the application the last known addresses for the respondents?

19 A. Yes.

20 Q. Are you requesting this Board to force pool
21 all unleased interest listed at Exhibit B-3?

22 A. Yes.

23 Q. Are you familiar with the fair market value
24

1 of drilling rights in the unit here and in the surrounding
2 area?

3 A. Yes.

4 Q. Could you advise the Board as to what those
5 terms are?

6 A. It's a five dollar bonus, five year term and
7 a one-eighth royalty.

8 Q. And did you gain this familiarity by
9 acquiring oil and gas leases and other agreements involving
10 the transfer of drilling rights in the unit involved here and
11 in the surrounding area?

12 A. Yes.

13 Q. In your professional opinion, do the terms
14 you've just testified to represent the fair market value of
15 and fair and reasonable compensation to be paid for drilling
16 rights within this unit?

17 A. Yes.

18 Q. Now, based on your testimony and as to those
19 respondents within the unit, that being Norfolk Southern
20 Railroad and the Williams...Donald and Cynthia Williams, who
21 have not voluntarily agreed to lease, do you recommend they
22 be allowed the following options with respect to their
23 ownership interest within the unit: one, participation; two,
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1 a cash bonus of five dollars per net mineral acre, plus a
2 one-eighth of eight-eighths royalty; or three, in lieu of a
3 cash bonus and a one-eighth of eight-eighths royalty, a share
4 in the operation of the well on a carried basis as carried
5 operator under the following conditions: Such carried
6 operator shall be entitled to his share of production from
7 the tracts pooled accruing to his interest exclusive of any
8 royalty or overriding royalty reserved in any leases,
9 assignments thereof, or agreements relating thereto of such
10 tracts but only after the proceeds applicable to his share
11 equal, A), 300% of the share of such cost applicable to the
12 interest of a carried operator of a leased tract or portion
13 thereof; or B), 200% of the share of such cost applicable to
14 the interest of the carried operator of an unleased tract or
15 portion thereof?

16 A. Yes.

17 Q. Do you recommend that the order provide that
18 the elections by respondents be in writing and sent to the
19 applicant at Columbia Natural Resources, LLC, 900
20 Pennsylvania Avenue, Charleston, West Virginia 25302,
21 Attention: Lee Robinson?

22 A. Yes.

23 Q. Should this be the address for all
24

1 communications with the applicant concerning any force
2 pooling order?

3 A. Yes.

4 Q. Do you recommend that the order provide that
5 if no written election is properly made by a respondent, then
6 such respondent should be deemed to have elected the cash
7 option in lieu of participation?

8 A. Yes.

9 Q. Should the unleased respondents be given 30
10 days from the date the order is executed to file their
11 written elections?

12 A. Yes.

13 Q. If an unleased respondent elects to
14 participate, should they be given 45 days to pay the
15 applicant for their proportionate share of well cost?

16 A. Yes.

17 Q. Does the applicant expect that party
18 electing to participate to pay in advance that party's share
19 of completed well cost?

20 A. Yes.

21 Q. Should the applicant be allowed 120 days
22 following the recordation date of the Board order, and
23 thereafter annually on that date until production is

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1 achieved, to pay or tender any cash bonus or delay rental
2 becoming due under any force pooling order?

3 A. Yes.

4 Q. Do you recommend the order provide that if
5 the respondent elects to participate but fails to pay their
6 proportionate share of well cost satisfactory to the
7 applicant for payment of those costs, then their election to
8 participate should be treated as having been withdrawn and
9 void, and they be deemed to be leased?

10 A. Yes.

11 Q. Do you recommend the order provide that
12 where a respondent elects to participate but defaults in
13 regard to well payment...well costs...the payment of well
14 costs, any cash sum becoming payable to that respondent be
15 paid within 60 days after the last date on which such
16 respondent could have paid or made arrangements for the
17 payment of those costs?

18 A. Yes.

19 Q. In this particular case, it's a conventional
20 well. There's no conflicting claims to the oil and gas and
21 there's no unknown owners. So, the Board does not need to
22 establish an escrow account?

23 A. That's correct.

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1 Q. Is that correct?

2 A. That's correct.

3 Q. And who should be named the operator under
4 the force pooling order?

5 A. Columbia Natural Resources, LLC.

6 JIM KISER: That's all I have for this witness at
7 this time, Mr. Chairman.

8 MASON BRENT: Any questions from the Board of this
9 witness?

10 (No audible response.)

11 MASON BRENT: Mr. Kiser, I don't seem to have a B-3
12 in my packet.

13 GARY EIDE: There's a revised Exhibit B.

14 JIM KISER: I do. This was the original signed
15 application submitted. I don't know what happened. I can
16 get copies of this to you. Would you like to see it?

17 MASON BRENT: Just make sure...yeah, I'd like to
18 see it and then just make sure it gets included. Mr. Eide,
19 you said you did not have it in your---?

20 GARY EIDE: I don't have a Revised Exhibit 3. We
21 have a Revised Exhibit B, not a B-3.

22 MASON BRENT: Well, we just need to make sure it
23 gets included in that package.

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1 JIM KISER: Okay.

2 MASON BRENT: Any questions of this witness?

3 (No audible response.)

4 MASON BRENT: Okay, you can proceed.

5 JIM KISER: I'll just get some copies to Dianne on
6 that.

7 SHARON PIGEON: All of your documents are revised
8 for this time, is that correct, the notice and everything?

9 JIM KISER: The only thing that would be revised
10 would be B, because it shows all the new people that we
11 noticed other than just the Anderson/Elswick Estate. B-3
12 wouldn't have changed.

13 SHARON PIGEON: So, are you telling---?

14 JIM KISER: B-3 wouldn't have changed. The
15 unleased parties---

16 SHARON PIGEON: So, are you telling us that was
17 with your original from last docket?

18 JIM KISER: Right.

19 SHARON PIGEON: Okay.

20 MASON BRENT: Okay.

21 GARY EIDE: Excuse me. There is a revised...there
22 is an Exhibit B-3 in here in the original.

23 JIM KISER: Yeah. Right.

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1 GARY EIDE: You've revised that?

2 JIM KISER: No.

3 GARY EIDE: Okay. So, this is---?

4 MASON BRENT: Okay. No, it is not revised.

5 SHARON PIGEON: So, the---.

6 JIM KISER: It's not revised. Nothing changed as
7 far as the unleased parties.

8 GARY EIDE: Okay. So, we're okay.

9 JIM KISER: Which is what B-3 denotes.

10 MASON BRENT: Okay, fine. Thank you. I'll see
11 that you get that back. Proceed with your next witness.

12

13 ROBERT KENNON

14 having been duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. KISER:

18 Q. Mr. Kennon, if you'd state your name for the
19 Board, who you're employed and in what capacity?

20 A. Robert Kennon. I'm a senior engineer in the
21 engineering department with CNR, LLC.

22 Q. And you're also previously testified before
23 the Board on numerous occasions and your qualifications as a

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1 expert in the area of operations and production have been
2 accepted by the Board?

3 A. Yes.

4 Q. And do your responsibilities include the
5 land involved here and in the surrounding area for this unit?

6 A. Yes.

7 Q. Are you familiar with the proposed
8 exploration and development of this unit?

9 A. Yes.

10 Q. What is the total depth of the well under
11 the plan of development?

12 A. 5,165 feet.

13 Q. Will this be sufficient to penetrate...
14 penetrate and test the common sources as supplied in the
15 subject formations?

16 A. Yes.

17 Q. Are we requesting this force pooling of
18 conventional gas reserves not only to include the designated
19 formations, but any other formations excluding coal
20 formations which may be between those formations designated from
21 the surface to the total depth drilled?

22 A. Yes.

23 Q. And what are estimated reserves for this
24

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1 unit?

2 A. 500 million standard cubic feet.

3 Q. Now, are you familiar with the well costs
4 for the proposed well under the plan of development?

5 A. Yes.

6 Q. Has an AFE been reviewed, signed and
7 submitted to the Board as Exhibit C to this application?

8 A. Yes.

9 Q. Was this AFE prepared by an engineering
10 department knowledgeable in the preparation of AFEs and
11 knowledgeable in regard to well costs in this particular
12 area?

13 A. Yes.

14 Q. In your professional opinion, does this AFE
15 represent a reasonable estimate of the well cost?

16 A. Yes.

17 Q. Could you state for the Board at this time
18 both the dry hole cost and the completed well cost?

19 A. Estimated dry hole costs are \$205,341. The
20 completed well costs including pipeline are \$404,233.

21 Q. Do these costs anticipate a multiple
22 completion?

23 A. Yes, they do.

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1 Q. Does your AFE include a reasonable charge
2 for supervision?

3 A. Yes.

4 Q. In your professional opinion, would the
5 granting of this application be in the best interest of
6 conservation, the prevention of waste and the protection of
7 correlative rights?

8 A. Yes.

9 JIM KISER: Nothing further of this witness at this
10 time, Mr. Chairman.

11 MASON BRENT: Any questions from the Board?
12 (No audible response.)

13 MASON BRENT: Do you have anything else?

14 JIM KISER: Mr. Chairman, we'd ask that the
15 application be approved as submitted with the submission
16 today of the revised Exhibit B to reflect the additional
17 parties noticed, or I guess it wasn't submitted today, but
18 submitted to the Board---

19 DONALD RATLIFF: In the original package.

20 JIM KISER: Yeah. Sometime ago, yeah, in the
21 second original pack, I guess.

22 MASON BRENT: Do I have a motion?

23 DONALD RATLIFF: Move to approve, Mr. Chairman.
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1 MASON BRENT: We have a motion. Do we have a
2 second?

3 BILL HARRIS: Second.

4 MASON BRENT: Any further discussion?

5 (No audible response.)

6 MASON BRENT: All in favor, signify by saying yes.

7 (All members signify by saying yes.)

8 MASON BRENT: Opposed?

9 (No audible response.)

10 MASON BRENT: You have approval.

11 JIM KISER: Thank you.

12 MASON BRENT: We'll now skip down the agenda to
13 item number fourteen.

14 JIM KISER: Thirteen.

15 MASON BRENT: Yeah.

16 JIM KISER: I think we've---.

17 MASON BRENT: Moving down to item fourteen, which
18 is a petition from Equitable Production Company for creation
19 and pooling of conventional gas unit V-535688. This is
20 docket number VGOB-04-0518-1291. I've just been informed
21 that I skipped over thirteen. We'll go ahead and do fourteen
22 and we'll come back to thirteen.

23 JIM KISER: Okay.

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1 MASON BRENT: I'd ask all the parties that would
2 address the Board on this matter to come forward at this
3 time.

4 JIM KISER: Mr. Chairman, Jim Kiser on behalf of
5 Equitable Production Company. Our witness in this matter
6 will be Mr. Don Hall who was previously sworn in docket
7 number one today. I'll remind him that he will be under
8 oath. He's got a large set of revised exhibits to pass out
9 and then we'll get underway.

10 MASON BRENT: Okay. Let the record reflect there
11 are no others.

12 (Don Hall passes out exhibits.)

13 MASON BRENT: Proceed.

14

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DON HALL

16 having been duly sworn, was examined and testified as
17 follows:

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DIRECT EXAMINATION

19 QUESTIONS BY MR. KISER:

20 Q. Mr. Hall, if you'd again state your name for
21 the Board, who you're employed by and in what capacity?

22 A. My name is Don Hall. I'm employed by
23 Equitable Production Company as District Landman.

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1 Q. And your responsibilities do include the
2 land involved here and in the surrounding area?

3 A. They do.

4 Q. Are you familiar with the application and
5 reviewed it that we filed seeking the establishment of a
6 drilling unit and pooling any unleased interest for EPC well
7 number V-535688, which was dated April the 16th, 2004?

8 A. Yes.

9 Q. Does Equitable own drilling rights in the
10 unit involved here?

11 A. We do.

12 Q. Now, prior to filing the application, were
13 efforts made to contact each of the respondents within the
14 unit in an attempt to work out a voluntary lease agreement?

15 A. Yes.

16 Q. What is the interest of Equitable under
17 lease within the unit?

18 A. We have 84.04% leased.

19 Q. And are you familiar with the ownership of
20 drilling rights of parties other than Equitable underlying
21 this unit?

22 A. Yes.

23 Q. And what percentage remains unleased at this
24

1 time?

2 A. 15.96%.

3 Q. Okay, at this time could you explain for the
4 Board why the revisions, why we have a revised Exhibit B and
5 B-2, I guess?

6 A. And Exhibit B under the...on the first page
7 under Vince Breeding Heirs, the original exhibit had Sharon
8 Breeding owning an interest in this tract and since...since
9 the exhibit was filed we found that she had conveyed her
10 interest to James D. Breeding. So, we included her interest
11 in the James D. Breeding listing there. Then you can see on
12 Exhibit B-2 we just missed Sharon Breeding as no longer being
13 an owner in this unit. That's the purpose of these revised
14 exhibits is to reflect that.

15 Q. Are all unleased parties set out at Exhibit
16 B-3?

17 A. Yes.

18 Q. And, Mr. Hall, I don't believe we have any
19 unknown interest owners within this unit.

20 A. No.

21 Q. In your professional opinion then, was due
22 diligence exercised to locate each of the respondents named
23 in Exhibit B?

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1 A. Yes.

2 Q. Now, are the addresses set out in Exhibit B
3 the last known addresses for the respondents?

4 A. They are.

5 Q. Are you requesting this Board to force pool
6 all the unleased interest as listed at Exhibit B-3?

7 A. Yes.

8 Q. Are you familiar with the fair market value
9 of drilling rights in the unit here and in the surrounding
10 area?

11 A. Yes.

12 Q. Could you advise the Board as to what those
13 are?

14 A. A five dollar bonus, on a five year term and
15 with a one-eighth royalty.

16 Q. In your professional opinion, do the terms
17 you have testified to represent the fair market value of and
18 the fair and reasonable compensation to be paid for drilling
19 rights within this unit?

20 A. It does.

21 Q. Now, as to those parties who have not
22 voluntarily agreed to lease and are listed at Exhibit B-3, do
23 you agree that they be allowed the following statutory
24

--

1 options with respect to their ownership interest within the
2 unit: one, participation; two, a cash bonus of five dollars
3 per net mineral acre, plus a one-eighth of eight-eighths
4 royalty; three, in lieu of a cash bonus and a one-eighth of
5 eight-eighths royalty, share in the operation of the well on
6 a carried basis as a carried operator under the following
7 conditions: Such carried operator shall be entitled to his
8 share of production from the tracts pooled accruing to his
9 interest exclusive of any royalty or overriding royalty
10 reserved in any leases, assignments thereof, or agreements
11 relating thereto of such tracts but only after the proceeds
12 applicable to his share equal, A), 300% of the share of such
13 cost applicable to the interest of a carried operator of a
14 leased tract or portion thereof; or B), 200% of the share of
15 such cost applicable to the interest of the carried operator
16 of an unleased tract or portion thereof?

17 A. Yes.

18 Q. Do you recommend that the order provide that
19 the elections by respondents be in writing and sent to the
20 applicant at Equitable Production Company, 1710 Pennsylvania
21 Avenue, Charleston, West Virginia 25328, attention Melanie
22 Freeman, Regulatory?

23 A. Yes.

24

--

1 Q. Should this be the address for all
2 communications with the applicant concerning any force
3 pooling order?

4 A. Yes.

5 Q. Do you recommend that the order provide that
6 if no written election is properly made by a respondent, then
7 such respondent should be deemed to have elected the cash
8 royalty option in lieu of participation?

9 A. Yes.

10 Q. Should the unleased respondents be given 30
11 days from the date the order was executed to file their
12 written elections?

13 A. Yes.

14 Q. If an unleased respondent elects to
15 participate, should they be given 45 days to pay the
16 applicant for their proportionate share of well cost?

17 A. Yes.

18 Q. Does the applicant expect that party
19 electing to participate to pay in advance that party's share
20 of completed well cost?

21 A. We do.

22 Q. Should the applicant be allowed 120 days
23 following the recordation date of the Board order, and
24

--

1 thereafter annually on that date until production is
2 achieved, to pay or tender any cash bonus or delay rental
3 becoming due under the force pooling order?

4 A. Yes.

5 Q. Do you recommend the order provide that if
6 the respondent elects to participate but fails to pay their
7 proportionate share of well cost to the applicant, then their
8 election to participate should be treated as having been
9 withdrawn and void?

10 A. Yes.

11 Q. Do you recommend that the order provide that
12 where a respondent elects to participate but defaults in
13 regard to the payment of well costs, any cash sum becoming
14 payable to that respondent be paid within 60 days after the
15 last date on which such respondent could have paid or made
16 satisfactory arrangement for the payment of those well costs?

17 A. Yes.

18 Q. So, we've got a conventional well with no
19 conflicting ownership within the tracts and no unknowns. So,
20 again, the Board does not need to establish an escrow
21 account?

22 A. That's correct.

23 Q. And who should be named the operator under
24

1 any force pooling order?

2 A. Equitable Production Company.

3 Q. And what is the total depth of the proposed
4 well under the plan of development?

5 A. 6766 feet.

6 Q. Is the applicant requesting the force
7 pooling of conventional gas reserves not only to include the
8 designated formations, but any other formations excluding
9 coal formations which may be between those formations
10 designated from the surface to the total depth drilled?

11 A. That's correct.

12 Q. And what are the estimated reserves for this
13 unit?

14 A. 400,000,000.

15 Q. Now, are you familiar with the well costs
16 for this well?

17 A. Yes.

18 Q. Has an AFE been reviewed, signed and
19 submitted to the Board? I guess, we submitted a revised one
20 today?

21 A. Yes, I submitted a revised one.

22 Q. Okay. And why has that AFE been revised?

23 A. The pipeline costs were not in the original
24

--

1 AFE and we've included them in this one.

2 Q. Okay. And was this AFE prepared by an
3 engineering department knowledgeable in the preparation of
4 AFEs and knowledgeable in regard to well costs in this area?

5 A. Yes.

6 Q. In your professional opinion, does it
7 represent a reasonable estimate of the well cost?

8 A. Yes.

9 Q. Could you state for the Board in accordance
10 with this revised, or not really revised, but new exhibit,
11 AFE that was presented what the dry hole costs and the
12 completed well costs are?

13 A. The dry hole cost is \$245,955, and the
14 completed well cost is \$411,279.

15 Q. Do these costs anticipate a multiple
16 completion?

17 A. Yes.

18 Q. Does your AFE include a reasonable charge
19 for supervision?

20 A. Yes.

21 Q. In your professional opinion, would the
22 granting of this application be in the best interest of
23 conservation, the prevention of waste and the protection of
24

1 correlative rights?

2 A. It does.

3 JIM KISER: Nothing further of this witness at this
4 time, Mr. Chairman.

5 MASON BRENT: Any questions from the Board?

6 (No audible response.)

7 MASON BRENT: Do you have anything further, Mr.
8 Kiser?

9 JIM KISER: Mr. Chairman, we'd ask that the
10 application be approved as submitted with the revised package
11 of exhibits.

12 MASON BRENT: Do I have a motion?

13 BILL HARRIS: Mr. Chairman, I move the application
14 be approved as amended.

15 MASON BRENT: I have a motion. Do I have a second?

16 DENNIS GARBIS: Second.

17 MASON BRENT: Any further discussion?

18 (No audible response.)

19 MASON BRENT: All in favor, signify by saying yes.

20 (All members signify by saying yes, but Donald
21 Ratliff.)

22 MASON BRENT: Opposed, say no.

23 DONALD RATLIFF: I'll abstain, Mr. Chairman.

24

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1 MASON BRENT: We have one abstention. You have
2 approval. All right, now we're back up since I got ahead of
3 myself.

4 The next item on our agenda, agenda item number
5 thirteen, is a petition from Equitable Production Company for
6 a well location exception for proposed well V-502345. This
7 is docket number VGOB-04-0518-1290. We'd ask all parties
8 interested in addressing the Board on this matter to come
9 forward at this time.

10 JIM KISER: Mr. Chairman, again, Jim Kiser and Don
11 Hall on behalf of Equitable Production Company. This is a
12 location exception that we're seeking.

13 MASON BRENT: Okay, there are no others. So you may
14 proceed.

15 JIM KISER: We don't have a formal exhibit persay.
16 We'd ask the Board members to refer to the plat that was
17 attached to the original application filed.

18

19

DON HALL

20

DIRECT EXAMINATION

21 QUESTIONS BY MR. KISER:

22 Q. Mr. Hall, you're a Senior Landman with
23 Equitable?

24

--

1 A. District Landman.

2 Q. District Landman, I'm sorry. Are you
3 familiar with the application we filed seeking this location
4 exception?

5 A. Yes.

6 Q. And have all interested parties been
7 notified as required by Section 4(b) of the Virginia Gas and
8 Oil Board regulations?

9 A. They have.

10 Q. Could you indicate for the Board the
11 ownership of the oil and gas underlying the unit for well
12 number V-502345?

13 A. Penn Virginia Oil and Gas Corporation owns a
14 100%.

15 Q. Okay, and we're seeking an exception from
16 two reciprocal wells. Does Equitable have the right to
17 operate those wells?

18 A. Yes.

19 Q. And...so there's no correlative rights
20 issues?

21 A. No.

22 Q. Okay, could you explain for the Board in
23 conjunction with the plat why we're seeking this location
24

--

1 exception?

2 A. This location is on the Jefferson Forest
3 surface. As part of our EIS we have with them, they choose
4 where these locations will go to have the least impact on the
5 surface. This was one of...one of those locations that was
6 chosen by the...by the Forest Service.

7 Q. And in the event this location exception
8 were not granted, would you project the estimated loss of
9 reserves resulting in waste?

10 A. 300 million cubic feet.

11 Q. And what's the total depth of this proposed
12 well?

13 A. 5306 feet.

14 Q. And is the applicant requesting that this
15 location exception cover conventional gas reserves to include
16 the designated formations from the surface to the total depth
17 drilled?

18 A. Yes.

19 Q. In your opinion, would the granting of this
20 location exception be in the best interest of preventing
21 waste, protecting correlative rights, and maximizing the
22 recovery of the gas reserves underlying the unit for V-
23 502345?

24

--

1 A. Yes.

2 JIM KISER: Nothing further of this witness at this
3 time, Mr. Chairman.

4 MASON BRENT: Any questions from the Board or
5 staff?

6 (No audible response.)

7 MASON BRENT: Do you have anything further, Mr.
8 Kiser?

9 JIM KISER: We'd ask that the application be
10 approved as submitted.

11 MASON BRENT: Okay, do we have a motion from the
12 Board?

13 DONALD RATLIFF: Move to approve, Mr. Chairman.

14 MASON BRENT: We have a motion to approve. Do I
15 have a second.

16 BILL HARRIS: Second.

17 MASON BRENT: A second. Any further discussion?

18 (No audible response.)

19 MASON BRENT: All in favor, signify by saying yes.

20 (All members signify by saying yes.)

21 MASON BRENT: Opposed, say no.

22 (No audible response.)

23 MASON BRENT: You have approval. In an effort to
24

--

1 continue to confuse you, we'll move on to number fifteen.
2 Item fifteen is a petition from Equitable Production Company
3 for creation and pooling of a conventional gas unit V-535690.
4 This is docket number VGOB-04-0518-1292. We'd ask all the
5 parties interested in addressing the Board in this matter to
6 come forward at this time.

7 JIM KISER: Mr. Chairman and Board members, again,
8 Jim Kiser and Don Hall on behalf of Equitable Production
9 Company. He is again passing out a packet of revised
10 exhibits to include Exhibit B, B-2, B-3 and the AFE.

11 MASON BRENT: Okay, let the record show there are
12 no others. You may proceed.

13 (Don Hall passes out Exhibits.)

14

15 DON HALL

16 QUESTIONS BY MR. KISER:

17 Q. Okay, just as a matter of housekeeping, Mr.
18 Hall, the reason for the revision to the exhibit...the family
19 of Exhibit B is again the Sharon Breeding and James Breeding.

20 A. That's correct.

21 Q. The reason that we had on the previous
22 hearing?

23 A. That's correct. If you look on page seven

24

--

1 of the Exhibit B, again you'll see under the Vince Breeding
2 and May Breeding heirs, James D. Breeding and Sharon Breeding
3 had conveyed...being the same tract, a different location on
4 it. She had conveyed her interest. So, we're submitting a
5 new exhibit to indicate that. And Exhibit B-2 reflects
6 Sharon Breeding has been dismissed from this process.

7 Q. Okay. And you're familiar with the
8 application we filed---

9 A. Yes.

10 Q. ---seeking to establish a drilling unit and
11 pooling any unleased interest for EPC well number V-535690,
12 which was dated April the 16th, 2004?

13 A. Yes.

14 Q. Does Equitable own drilling rights in the
15 unit here?

16 A. We do.

17 Q. Prior to filing the application, were
18 efforts made to contact each of the respondents in the unit
19 in an attempt to work out a voluntary lease agreement?

20 A. Yes.

21 Q. What is the interest of Equitable under
22 lease within this unit?

23 A. We have 99.78% leased in the unit.

24

--

1 Q. And then the percentage that's unleased
2 would be 0.22%?

3 A. That's correct.

4 Q. Are all the unleased parties set out in
5 Exhibit B-3?

6 A. They are.

7 Q. In your professional opinion, was due
8 diligence exercised to locate each of the respondents named
9 in Exhibit B?

10 A. Yes.

11 Q. Now, are the addresses set out in Exhibit B
12 to the application the last known addresses for the
13 respondents?

14 A. They are.

15 Q. Are you requesting this Board to force pool
16 all unleased interest as listed at Exhibit B-3?

17 A. Yes.

18 Q. Are you, again, familiar with the fair
19 market value of drilling rights in the unit here and in the
20 surrounding area?

21 A. Yes.

22 Q. Could you advise the Board as to what those
23 are?

24

--

1 A. A five dollar bonus, a five year term and
2 with a one-eighth royalty.

3 Q. In your professional opinion, do the terms
4 you have testified to represent the fair market value of and
5 the fair and reasonable compensation to be paid for drilling
6 rights within this unit?

7 A. They do.

8 JIM KISER: Mr. Chairman, at this time I'd ask that
9 the testimony that was taken regarding the statutory options
10 that are afforded any unleased parties listed at Exhibit B-3
11 and their time periods in which to make those elections that
12 was taken in VGOB docket number 04-0518-1291 be incorporated
13 for purposes of this hearing.

14 MASON BRENT: That will be incorporated.

15 Q. Mr. Hall, again, we don't have any
16 conflicting ownership or title questions as to the ownership
17 of the oil and gas and we do not have any unknown interest
18 owners within the unit. So, the Board does not need to
19 establish an escrow account, is that correct?

20 A. That's correct.

21 Q. And who should be named operator under any
22 force pooling order?

23 A. Equitable Production Company.

24

--

1 Q. Now, what's the total depth of this proposed
2 well?

3 A. 6471 feet.

4 Q. Is the applicant requesting the force
5 pooling of conventional gas reserves not only to include the
6 designated formations, but any other formations excluding
7 coal formations which may be between those formations
8 designated from the surface to the total depth drilled?

9 A. Yes.

10 Q. And what are the estimated reserves for this
11 unit?

12 A. 400 million cubic feet.

13 Q. Now, are you familiar with the well costs
14 for this well?

15 A. Yes.

16 Q. And did we just submit revised or a new AFE
17 to the Board?

18 A. We did. And it also...as the first one did,
19 it reflects the pipeline costs that were not in the original
20 AFE that we submitted.

21 Q. In your opinion, does it represent a
22 reasonable estimate of the well cost?

23 A. It does.

24

--

1 Q. Could you state for the Board both the
2 dryhole costs and the completed well costs?

3 A. The dry hole cost is \$237,776...I'm sorry,
4 200...yeah, \$237,776, and the total cost is \$402,623.

5 Q. Do these costs anticipate a multiple
6 completion?

7 A. They do.

8 Q. Does your AFE include a reasonable charge
9 for supervision?

10 A. Yes.

11 Q. In your professional opinion, would the
12 granting of this application be in the best interest of
13 conservation, the prevention of waste and the protection of
14 correlative rights?

15 A. Yes.

16 JIM KISER: Nothing further of this Chairman at
17 this...of this witness at this time, Mr. Chairman.

18 MASON BRENT: Any questions from the Board?

19 BILL HARRIS: Mr. Chairman.

20 MASON BRENT: Mr. Harris.

21 BILL HARRIS: Let me just ask a quick question. I
22 notice a couple of these you were talking about pipeline
23 costs. Was that just inadvertently left out of the AFE?
24

1 DON HALL: Yeah, at the time...at the time the
2 person who prepared the AFE hadn't...hadn't gotten those
3 costs. I picked them up in between and we submitted them to
4 give you an accurate AFE.

5 BILL HARRIS: Thank you.

6 MASON BRENT: Any further questions of the witness?

7 (No audible response.)

8 MASON BRENT: Do you have anything further, Mr.
9 Kiser?

10 JIM KISER: We'd ask that the application be
11 approved with the revised exhibits.

12 MASON BRENT: Do we have a motion for approval?

13 DENNIS GARBIS: Motion to approve.

14 MASON BRENT: Do we have a second?

15 BILL HARRIS: Second.

16 MASON BRENT: Any further discussion?

17 (No audible response.)

18 MASON BRENT: All in favor, signify by saying yes.

19 (All members signify by saying yes, but Donald
20 Ratliff.)

21 MASON BRENT: Opposed, say no.

22 (No audible response.)

23 MASON BRENT: You have approval.

24

--

1 JIM KISER: Thank you.

2 DONALD RATLIFF: Due to Alpha's involvement, I'll
3 abstain, Mr. Chairman.

4 MASON BRENT: One abstention.

5 DON HALL: Thank you all.

6 JIM KISER: Thank you.

7 MASON BRENT: Thank you all. Okay, we're back up.

8

9 (Jim Kiser confers with the Chairman.)

10 MASON BRENT: The next item on our agenda, it's
11 back to agenda item number three, which is a petition from
12 prevailing plaintiff's for disbursement of funds escrowed on
13 their behalf, Unit U-16. This is docket number VGOB-93-0622-
14 0381, and I'll point out to you it's -02 instead of 01 as it
15 appears on the...on the agenda. We'll have that issue with
16 the next several items. The last two digits have been
17 corrected. I will certainly state them for the record as we
18 go. I'd ask all parties that would like to address the Board
19 on this matter to come forward at this time.

20 MARK SWARTZ: Mark Swartz, Anita Duty and possibly
21 Les Arrington.

22 MASON BRENT: And possibly or will he be---?

23 MARK SWARTZ: Possibly. At least on this stuff.

24

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1 ANITA DUTY: (Inaudible).

2 MARK SWARTZ: Probably not.

3 (Anita Duty confers with Mark Swartz.)

4 MASON BRENT: The record will show there are no
5 others. You may proceed.

6 MARK SWARTZ: Anita, has got one more exhibit for
7 you this morning here.

8 (Anita Duty passes out exhibits.)

9 MARK SWARTZ: You need to be sworn, okay.

10 (Anita Duty is duly sworn.)

11

12 ANITA DUTY

13 having been duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. SWARTZ:

17 Q. You need to state your name for us.

18 A. Anita Duty.

19 Q. Okay, who do you work for?

20 A. CNX Gas Company.

21 Q. And do you have a title? Boss?

22 A. I do have a title, but it's not the right
23 title.

24

--

1 Q. Okay. What do you...what do you do for them
2 in your job? I mean, what kind of things do you?

3 A. I prepare the force pooling applications.

4 Q. Okay. What, if anything, do you have to do
5 with disbursements?

6 A. I make sure we balance the accounts---

7 Q. Okay.

8 A. ---with the bank.

9 Q. Did you do the work on unit U-16, the one
10 that the Chairman has just called?

11 A. Yes.

12 Q. Okay. And have...did we share with the
13 Board a spreadsheet that you had prepared last month, which
14 hopefully founded into your books?

15 A. I know I gave it to Mr. Wilson. I don't
16 know if he gave to them or not.

17 MARK SWARTZ: Do you guys have---?

18 A. I think what we were going to do is use
19 this.

20 Q. Oh, you're going to use that, okay. Do you
21 want to pass that out or do they have it?

22 LESLIE K. ARRINGTON: I'll get it.

23 MARK SWARTZ: Les, can hand them out.

24

--

1 A. They had it from last time.

2 MARK SWARTZ: This is a copy of what I think we had
3 marked as Exhibit Two at the last hearing.

4 (Leslie K. Arrington passes out the exhibits.)

5 Q. Okay, Anita, with regard Unit U-16, did you
6 obtain the royalty information from your company and the
7 agents of your company to indicate what they believe they
8 have paid into escrow for Unit U-16?

9 A. Yes.

10 Q. And did you also have available to you the
11 bank records?

12 A. Yes.

13 Q. And did you compare those?

14 A. Yes.

15 Q. And when you compared them, what did you
16 determine?

17 A. The account balanced.

18 Q. Okay. So, you were able to reach...to bring
19 the accounts into balance at least in terms of what you
20 believe you had paid and what they indicated they had
21 received?

22 A. Right.

23 Q. Okay. Which tract is that we're seeking a
24

1 partial disbursement here?

2 A. Tract 2.

3 Q. Okay. And after the monies is attributable
4 to Tract 2 are disbursed with regard to Unit 16, will there
5 still be remaining funds in escrow?

6 A. Yes.

7 Q. Okay. Do you have a split agreement between
8 the persons that are claimants under Tract 2?

9 A. Yes.

10 Q. Okay. So, they have agreed in writing and
11 they've provided you with that writing, so you know that they
12 have an agreement?

13 A. Right.

14 Q. Okay. And what is it in terms of
15 disbursement from escrow that you are asking the Board to do
16 in its order today with regard to Tract 2, U-16?

17 A. To disburse 42.1381%, which would be half to
18 each owner.

19 Q. Okay, now the 42.1381% would be the
20 disbursement...the percentage of the entire escrow account
21 that should come out in the disbursement?

22 A. Right.

23 Q. And that 42.1381% would be then divided in
24

--

1 half to go to each owner?

2 A. Yes.

3 Q. So, Wyatt would get 21% and change and BPC
4 would get 21% and change, correct?

5 A. Correct.

6 Q. And you've done this in a percentage so that
7 if the dollar amount has changed since we prepared this
8 spreadsheet the percentage will work?

9 A. Right.

10 Q. So, the order should reflect this 42.1381%
11 instead of a dollar figure?

12 A. Correct.

13 Q. And after the...this portion of the escrow
14 with regard to Tract 2 of Unit U-16 has been disbursed by
15 order of the Board by its escrow agent, are you then also
16 requesting that from that point forward the operator be
17 allowed to pay these people who've entered into this split
18 agreement directly rather than escrowing your funds?

19 A. Yes.

20 MARK SWARTZ: That's all I have.

21 MASON BRENT: Okay, any questions from the Board?

22 (Mason Brent and Sharon Pigeon confer.)

23 MASON BRENT: Mr. Swartz, I recall from the last
24

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1 meeting we'd asked that you give notice to the parties---.

2 MARK SWARTZ: Right. I think that the first sheet
3 that you were handed---

4 MASON BRENT: This sheet here. Certificate...oh,
5 yeah...yeah, okay.

6 MARK SWARTZ: ---should be the...was intended to
7 indicate that we had done that. Sorry.

8 Q. Anita, you had also passed a several page
9 exhibit today to the Board to document that after our last
10 hearing we have...we have gone ahead and given notice so that
11 we could...and this to document that that occurred, right?

12 A. Yes. Yes.

13 MARK SWARTZ: Okay.

14 MASON BRENT: Okay. I just want to get that---

15 MARK SWARTZ: That's fine.

16 MASON BRENT: ---on the record.

17 MARK SWARTZ: That's fine.

18 SHARON PIGEON: Are you offering this as an
19 Exhibit?

20 MARK SWARTZ: Yes. It was received last month, but
21 we would...we could offer it again. It was Exhibit Two at
22 last month's hearing.

23 SHARON PIGEON: And that would mean this one?

24

--

1 MARK SWARTZ: It should be pretty much the same, I
2 think, isn't it? Yeah, it is.

3 ANITA TESTER DUTY: Oh, she's talking about the
4 certificate of mailing.

5 SHARON PIGEON: I'm talking about the mailing.

6 MARK SWARTZ: Oh, the certificate of mailing. You
7 can call that whatever you want. I'm sorry.

8 SHARON PIGEON: Well, I'm just trying to clarify it
9 for the order and that's why he wanted it on the record.

10 MARK SWARTZ: Okay, well, normally we don't offer
11 proofs of mailing as exhibits. We file them with...with the
12 DGO. So---.

13 SHARON PIGEON: That's correct. But normally you
14 offer testimony. That's why I asked you about that.

15 MARK SWARTZ: So, that's...but it's certainly your
16 call. I mean, whatever you're comfortable with.

17 SHARON PIGEON: We just wanted it in the record.

18 MARK SWARTZ: Okay, that works. That works.

19 MASON BRENT: Any other questions?

20 (No audible response.)

21 MASON BRENT: Okay, do we have a motion to approve
22 the disbursement?

23 DONALD RATLIFF: So moved, Mr. Chairman.

24

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1 MASON BRENT: We have a motion for approval.

2 BILL HARRIS: Second.

3 MASON BRENT: We have a second. Any further
4 discussion?

5 (No audible response.)

6 MASON BRENT: All in favor, signify by saying yes.

7 (All members signify by saying yes.)

8 MASON BRENT: Opposed?

9 (No audible response.)

10 MASON BRENT: You have approval. The next item on
11 the agenda, number four, is a petition from prevailing
12 plaintiffs for disbursement of funds escrowed on their behalf
13 in unit U-19. This is docket number VGOB-94-1024-0475-01. I
14 understand this item has been continued until next month.

15 MARK SWARTZ: I don't know.

16 GARY EIDE: Mr. Chairman, we have a letter from the
17 attorney requesting it be continued until the June docket.

18 MASON BRENT: It will be continued then. The next
19 item on the agenda is agenda item number five, which is a
20 petition from prevailing plaintiffs for disbursement of funds
21 escrowed on their behalf in unit V, Victory, 16. This is
22 docket number VGOB-95-0818-0511-03, not 02 as shown on the
23 agenda. We'd ask all the parties that would like to address
24

--

1 the Board on this matter to come forward at this time.

2 MARK SWARTZ: Mark Swartz and Anita Duty once
3 again.

4 MASON BRENT: Let the record reflect there are no
5 others. You may continue.

6

7

ANITA DUTY

8

DIRECT EXAMINATION

9 QUESTIONS BY MR. SWARTZ:

10 Q. State your name for us.

11 A. Anita Duty.

12 Q. Who do you work for?

13 A. CNX Gas Company.

14 Q. Did you undertake to do the accounting or to
15 verify the accounting with regard to this request for
16 disbursement?

17 A. Yes.

18 Q. Did you compare the records of CNX and CNX's
19 agents when they were paying royalties into the escrow
20 account to the bank's records?

21 A. Yes.

22 Q. And when you did that, what did you
23 determine?

24

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1 A. They balance.

2 Q. Okay. How many tracts are we seeking to
3 have disbursements made with regard to unit V-16?

4 A. Just one, from Tract 6.

5 Q. Okay. And do you know for a fact that the
6 claimants and owners in Tract 6 have indeed entered into a
7 written royalty split agreement?

8 A. Yes.

9 Q. And have they agreed to split the royalties
10 that they claim 50/50?

11 A. Yes.

12 Q. And are the claimants here Wyatt and
13 Buchanan Production?

14 A. Yes.

15 Q. Okay. What percentage of the money in the
16 escrow account with regard to B-16 are you asking to be
17 disbursed to Wyatt and BPC in accordance with their
18 agreement?

19 A. 19.80135% each.

20 Q. Okay. And a total of 39.60244711?

21 A. Uh-huh.

22 Q. Is that yes?

23 A. Yes.

24

1 Q. Okay. And, again, you've expressed that as
2 a percentage rather than a dollar figure?

3 A. Yes.

4 Q. So, that if more money has come in since you
5 did the accounting for last month that could be split on the
6 same percentage, correct?

7 A. Right.

8 Q. Are you also requesting that in the event
9 the Board makes this order disbursing this portion of the
10 funds escrowed with regard to V-16, that the operator be
11 authorized by the Board's order to begin paying these two
12 folks directly with regard to Tract 6 and no longer escrowing
13 those funds?

14 A. Yes.

15 Q. Is there anything else you need to tell the
16 Board about this?

17 A. No.

18 Q. And, again, you have since the last hearing
19 provided notice to these folks?

20 A. Uh-huh, yes.

21 Q. Okay. That's all I have.

22 MASON BRENT: Any questions?

23 GARY EIDE: Excuse me, was that 19% each?

24

--

1 MARK SWARTZ: Each, for a total of 39...the number
2 that I...that I referred to.

3 GARY EIDE: I gotcha. I just wanted to make sure.

4 MARK SWARTZ: Okay.

5 ANITA DUTY: Well, actually when I filed the
6 miscellaneous petition I divided it up equally, but on the
7 spreadsheet I've got them as a total. So, I kind of did it
8 both ways.

9 MASON BRENT: Any other questions?

10 (No audible response.)

11 MASON BRENT: Do we have a motion to approve
12 disbursement?

13 DONALD RATLIFF: Motion to approve, Mr. Chairman.

14 MASON BRENT: Motion to approve. Do we have a
15 second?

16 BILL HARRIS: Second.

17 MASON BRENT: We have a second. Any further
18 discussion?

19 (No audible response.)

20 MASON BRENT: All in favor, signify by saying yes.

21 (All members signify by saying yes.)

22 MASON BRENT: Opposed, say no.

23 (No audible response.)

24

--

1 MASON BRENT: Okay, you have approval.

2 MARK SWARTZ: Thank you.

3 MASON BRENT: The next item on our agenda, item
4 number six, is a petition from prevailing claimants for the
5 disbursement of funds escrowed on their behalf in unit V, as
6 in Victory, 20. This is docket number VGOB-92-0721-0243-02.
7 I'd ask all parties that would like to address the Board on
8 this matter to come forward at this time.

9 MARK SWARTZ: Mark Swartz and Anita Duty again.

10 MASON BRENT: Okay. Let the record reflect there
11 are no others. You may proceed.

12

13 ANITA DUTY

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. SWARTZ:

16 Q. Anita, you need to state your name for us
17 again.

18 A. Anita Duty.

19 Q. Who do you work for?

20 A. CNX Gas Company.

21 Q. Were you the person who did the accounting
22 to make this request for escrow disbursement?

23 A. Yes.

24

--

1 Q. How many tracts are we talking about today?

2 A. Just one, Tract 3.

3 Q. Okay. And have the claimants and owners to
4 Tract 3, to your knowledge, entered into a written royalty
5 split agreement?

6 A. Yes.

7 Q. And does that written royalty split
8 agreement provide that they each share one-half of the
9 escrowed funds attributable to this tract?

10 A. Yes.

11 Q. Did you have available to you the records of
12 CNX and/or its agents with regard to the payment of royalty
13 into the escrow account?

14 A. Yes.

15 Q. Did you have the bank's records with regard
16 to what they showed as coming into the escrow account?

17 A. Yes.

18 Q. Did you compare those?

19 A. Yes, and they balanced.

20 Q. They balanced, okay. With regard to this
21 tract, what is the total percentage that you are seeking to
22 disburse out of escrow?

23 A. 2.4029%.

24

--

1 Q. And each party would get what percentage?

2 A. 1.20145.

3 Q. And are you requesting also that after the
4 Board directs the escrow agent to pay out those percentages,
5 that the...that the operator be authorized to pay royalties
6 in the future directly to Torch and CNX?

7 A. Yes.

8 Q. Did you, after the last hearing that we were
9 here with regard to this matter, provide notice to these
10 parties?

11 A. Yes.

12 Q. And have you shared that proof of notice
13 with the Board today?

14 A. Yes.

15 Q. That's all I have.

16 MASON BRENT: Any questions?

17 (No audible response.)

18 MASON BRENT: Do I have a motion for approval?

19 DENNIS GARBIS: Motion to approve.

20 MASON BRENT: Do we have a second?

21 BILL HARRIS: Second.

22 MASON BRENT: Any further discussion?

23 (No audible response.)

24

--

1 MASON BRENT: All in favor, signify by saying yes.

2 (All members signify by saying yes.)

3 MASON BRENT: Opposed, say no.

4 (No audible response.)

5 MASON BRENT: Okay, you have approval. The next
6 item on our agenda, item number seven, is a petition from
7 prevailing claimants for disbursement of funds escrowed on
8 their behalf for unit VP8SGU1. This is docket number VGOB-
9 95-1024-0526-03. I'd ask all parties who are interested in
10 addressing the Board on this matter to come forward at this
11 time.

12 MARK SWARTZ: Mark Swartz and Anita Duty.

13 MASON BRENT: Let the record there are no others.

14 You may proceed.

15

16 ANITA DUTY

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. SWARTZ:

19 Q. Anita, you need to state your name for us.

20 A. Anita Duty.

21 Q. Who do you work for?

22 A. CNX Gas Company.

23 Q. Were you the person that did the royalty

24

--

1 accounting with regard to this request to disburse funds from
2 escrow?

3 A. Yes.

4 Q. In doing so, did you have available to you
5 the records of CNX and/or its agents with regard to the
6 royalties paid into the escrow account?

7 A. Yes.

8 Q. Did you also have available to you the
9 bank's records with regard to the dollars that they believed
10 they had received?

11 A. Yes.

12 Q. Did you compare them, and if you did so,
13 what did you find?

14 A. Yes, and they balanced.

15 Q. Okay. How many tracts are we talking about
16 with regard to this agreement concerning VP-8 sealed gob unit
17 1?

18 A. Three.

19 Q. And the parties to the agreement are Hugh
20 McRae and CNX, either BPC or Permac, is that correct?

21 A. Yes.

22 Q. Did these people have actual written
23 agreements?

24

--

1 A. Yes.

2 Q. And have you seen them?

3 A. Yes.

4 Q. And do those written agreements provide that

5 each party would receive half of the funds on escrow with

6 regard to the tract?

7 A. Yes.

8 Q. With regard to these three tracts, I think

9 we're talking about Tracts 13, 14, and 18, correct?

10 A. Yes.

11 Q. What are the...you can do this in either

12 order, but what are the percentages that would go to each of

13 the owners/claimants who have reached the split agreement and

14 then what's the total percentage of the escrow dollars coming

15 out? Let's start with Tract 13.

16 A. I don't have that one individual.

17 Q. Okay. This one you don't have the

18 individual.

19 A. No.

20 Q. Okay, what's the total coming out of Tract

21 13?

22 A. 8.7279.

23 Q. And the Board's order should simply divide

24

1 that number in half and provide that each party would receive
2 half of that total?

3 A. Right.

4 Q. Okay. With regard to Tract 14, what is the
5 total percentage that would come out of the escrow account?

6 A. 9.0375.

7 Q. And each party would receive that number
8 divided by two?

9 A. Yes.

10 Q. And with regard to Tract 18, what's the
11 total that's coming out of escrow?

12 A. 12.6608%.

13 Q. Okay. And, again, each party would receive
14 one-half of the 12.6608% when it's distributed?

15 A. Yes.

16 Q. And you've expressed these distributions in
17 terms of percentages so if more money has found its way into
18 the accounts since you balanced it, the percentage and the
19 accounting will still work?

20 A. Yes.

21 Q. And are you asking that the Board after the
22 escrow agent has made these disbursements direct the operator
23 or authorize the operator to pay these people who have

24

--

1 reached royalty split agreement directly rather than
2 escrowing their money?

3 A. Yes.

4 Q. And you will recall when we were last here
5 we had not notified these folks.

6 A. Right.

7 Q. Have you done so in the meantime?

8 A. Yes.

9 Q. And have you filed proofs with regard to
10 that with the Board today?

11 A. Yes.

12 Q. That's all I have.

13 MASON BRENT: Any questions from the Board?

14 (No audible response.)

15 MASON BRENT: Do we have a motion for approval?

16 DENNIS GARBIS: Motion to approve.

17 MASON BRENT: We have a motion to approve. Do we
18 have a second?

19 BILL HARRIS: Second.

20 MASON BRENT: Any further discussion?

21 (No audible response.)

22 MASON BRENT: All in favor of the motion, signify
23 by saying yes.

24

--

1 (All members signify by saying yes.)

2 MASON BRENT: Opposed, say no.

3 (No audible response.)

4 MASON BRENT: You have approval. The next item on
5 the agenda, item number eight, is a petition from prevailing
6 plaintiffs for disbursement of funds escrowed on their behalf
7 in unit VP8SGU2. This is docket number VGOB-97-0617-0587-02.

8 Ask all parties interested in addressing the Board on this
9 matter to come forward at this time.

10 MARK SWARTZ: Mark Swartz and Anita Duty.

11 MASON BRENT: Let the record reflect there are no
12 others. You may proceed.

13 MARK SWARTZ: Just one housekeeping matter. The
14 first tract listed there, 8, where we've got Wyatt/Island
15 Creek Coal Company. It actually turned out it was Buchanan
16 Production Company. So, we need to withdraw that today,
17 right, or no?

18 ANITA DUTY: No, our royalty split agreement didn't
19 cover Island Creek.

20 MARK SWARTZ: Oh, it is Island Creek. Okay, okay,
21 okay, okay.

22 ANITA TESTER DUTY: It is Island Creek, but our
23 royalty split.

24

--

1 MARK SWARTZ: Okay. So, we cannot proceed on that
2 because we don't have an agreement. There's no split
3 agreement between Wyatt and Island Creek. So---.

4 MASON BRENT: This is on Tract 8?

5 MARK SWARTZ: Tract 8. So, we want to withdraw
6 that one.

7 ANITA DUTY

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. SWARTZ:

10 Q. With regard to these other tracts identified
11 in Exhibit 2 from last month's hearing and it's also on the
12 table today, what are the other...what are the tracts that
13 you're seeking a disbursement order then today?

14 A. 10A, 10B, 10C, and 10D.

15 Q. And the claimants are all Wyatt on the one
16 side and then we have Garden Realty, CNX Oakwood and Garden
17 Realty, correct?

18 A. Yes.

19 Q. Have you seen actual written royalty split
20 agreements that these parties have entered into?

21 A. Yes.

22 Q. And do all of those agreements...are all of
23 those agreements in writing?

24

--

1 A. Yes.

2 Q. And do all of them provide for an equal
3 50/50 split?

4 A. Yes.

5 Q. With regard to Tract 10A, what is the total
6 percentage in the escrow account that you're seeking a
7 disbursement?

8 A. 20.1749%.

9 Q. Okay. And the order should also provide
10 that each of the parties identified, in this case it would be
11 Wyatt and Garden Realty, would receive one-half of that
12 20.1749%?

13 A. Yes.

14 Q. And, again, you've expressed this has a
15 percentage. So, if more monies are in the account, it will
16 work?

17 A. Yes.

18 Q. And also you're requesting I take it, that
19 the Board direct the operator that after these funds have
20 been disbursed...actually not even waiting for that, but that
21 the operator can immediately begin paying the royalty
22 split...the parties who have royalty split agreements
23 directly?

24

--

1 A. Yes.

2 Q. In order to do the accounting here, did you
3 actually have the records of CNX and their agents available
4 to you?

5 A. Yes.

6 Q. Did you also have available to you the
7 bank's escrow agent records?

8 A. Yes.

9 Q. And when you...did you compare them?

10 A. Yes, and they balanced.

11 Q. Okay. When we were last here it's my
12 recollection that we had not notified the owners and
13 claimants to these tracts, is that correct?

14 A. Right.

15 Q. And have you done so in the interim?

16 A. Yes.

17 Q. And have you filed proofs with regard to
18 that with the Board?

19 A. Yes.

20 Q. Okay. With regard to Tract 10B, what is the
21 percentage that needs to come out...the total percentage that
22 needs to come out of escrow?

23 A. 38.5342%.

24

--

1 Q. Okay. And that would be Wyatt, CNX and
2 Oakwood Gathering, correct?

3 A. Yes.

4 Q. And each of those parties who have entered
5 into that particular royalty split agreement with regard to
6 10B would receive one-half each of the total 38.5342%?

7 A. Yes.

8 Q. With regard to Tract 10C, we have Wyatt and
9 Garden Realty entering into an agreement, correct?

10 A. Yes.

11 Q. And they would each receive one-half of a
12 total of what percent?

13 A. 17.4614.

14 Q. Okay. With regard to Tract 10D, we again
15 have Wyatt and Garden Realty and I take it each of them would
16 receive one-half of what percentage?

17 A. 1.4783.

18 Q. Okay. With regard to these other three
19 tracts, are you also requesting that the operator be allowed,
20 as soon as the order is entered, to pay these folks directly?

21 A. Yes.

22 Q. That's all I have.

23 MASON BRENT: Any questions?

24

--

1 DONALD RATLIFF: Mr. Chairman, the petition that we
2 have is not revised, right? It lists Tract 8, the one in the
3 packet.

4 MARK SWARTZ: Right. We have not revised the
5 petition. We're just withdrawing our request that that
6 happen. I mean, normally we would...but it's not revised.
7 You only have one petition.

8 DONALD RATLIFF: So, what are we approving?

9 MASON BRENT: Well, we'll be approving...what he's
10 asking for approval of is 10---

11 DONALD RATLIFF: This petition with the revision.

12 MASON BRENT: Withdrawing 8---

13 MARK SWARTZ: Right.

14 MASON BRENT: ---but approving 10A through D.

15 MARK SWARTZ: Correct. You're right. You
16 shouldn't be approving the petition. You should be approving
17 what you just said if that works for you all.

18 MASON BRENT: Right. I'll ask for a motion for
19 approving disbursements from Tracts 10A through D and
20 withdrawing the request for disbursement out of Tract 8.

21 DONALD RATLIFF: So moved, Mr. Chairman.

22 MASON BRENT: Do we have a second?

23 DENNIS GARBIS: Second.

24

--

1 MASON BRENT: Any further discussion?

2 (No audible response.)

3 MASON BRENT: All in favor, signify saying yes.

4 (All members signify by saying yes.)

5 MASON BRENT: Opposed, say no.

6 (No audible response.)

7 MASON BRENT: You have approval. The next item on
8 our agenda, item number nine, is a petition from CNX Gas
9 Company, LLC for the disbursement of funds on deposit in the
10 escrow account for unit VP3SGU1 based on the claimants
11 agreement regarding the ownership of gas production
12 applicable to certain tracts. This is docket number VGOB-94-
13 1213-0485-01. I'd ask all parties that would address the
14 Board on this matter to come forward at this time.

15 MARK SWARTZ: Mark Swartz and Anita Duty.

16 MASON BRENT: Let the record reflect there are no
17 others. You may proceed.

18 (Anita Duty and Mark Swartz confer.)

19

20 ANITA DUTY

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. SWARTZ:

23 Q. Anita, you need to state your name for us.

24

--

1 A. Anita Duty.

2 Q. And who do you work for?

3 A. CNX Gas Company.

4 Q. Did you do the accounting with regard to BP-
5 3 sealed gob unit 1 that we're going to be talking about
6 today?

7 A. Yes.

8 Q. And in order to do that, did you have
9 available to you the CNX and/or CNX's agent's information and
10 documentation with regard to the amounts paid into the escrow
11 account?

12 A. Yes.

13 Q. And did you also have for comparison
14 purposes the banking...bank's records with regard to the
15 monies that they showed as received into the escrow account?

16 A. Yes.

17 Q. And did you compare them, and if you did so,
18 what did you determine?

19 A. Yes, and they balanced.

20 Q. Okay. There a number of tracts in this unit
21 that we're going to be talking about that you're seeking
22 disbursement or partial disbursement, correct?

23 A. Yes.

24

--

1 Q. And we're talking about 17A, B, C, D, E, F,
2 G and 18, is that correct?

3 A. Yes.

4 Q. This...have you notified the parties of this
5 hearing today?

6 A. Yes.

7 Q. And have you filed proofs with regard to
8 that with the Board today?

9 A. Yes.

10 Q. Okay. Is there a little different exhibit
11 that the Board could refer to with regard to this
12 application, the Exhibit EE that was attached to it?

13 A. Yes.

14 Q. And does that set forth the percentages
15 that...it's after the map, or I guess it's just before the
16 map, and are those...are the percentages that we're going to
17 be talking about that need to be in the order in this Exhibit
18 EE?

19 A. Yes.

20 Q. Okay. With regard to...let's just start at
21 the top. With regard to Tract 17A, what is it that you're
22 requesting the Board order in terms of a disbursement?

23 A. 18.76828%

24

--

1 Q. To?

2 A. To be divided among the two owners.

3 Q. Okay. Which would be Buchanan Production
4 and?

5 A. Levisa Coal Company.

6 Q. Okay. The...and that is less than the total
7 interest of Levisa Coal, is that correct?

8 A. Yeah. Yes.

9 Q. And could you tell the Board why that...that
10 would be?

11 A. Buchanan Production Company only owns a
12 percentage of that tract. So, we can only split what portion
13 that we own.

14 Q. Okay. BPC has a lessor interest than Levisa
15 in the tract?

16 A. Yes, we purchased several owners on the oil
17 and gas side, but not all of them. So, we only have 71%.

18 Q. Okay. So, the split agreement between
19 Levisa and Buchanan is for less than a 100%?

20 A. Yes.

21 Q. And so a portion of that money with regard
22 to Tract 17A would remain in escrow because the agreement
23 between Levisa and Buchanan is only...is limited to Buchanan
24

1 Production's undivided interest?

2 A. Correct.

3 Q. Okay. That's why the percentages are
4 different?

5 MASON BRENT: And what is that percent?

6 A. 71.60494%.

7 MASON BRENT: No, that would remain.

8 Q. No, no.

9 A. Oh.

10 Q. The percentage you're asking to come out of
11 escrow is again what?

12 A. 18.76828.

13 Q. Okay. And to calculate the percentage that
14 would remain, you would subtract that 18.7682% from 26.21087,
15 correct?

16 A. Yes.

17 Q. And that's what would remain because of the
18 difference in the ownership, is that correct?

19 A. Yes.

20 Q. Okay. Going to Exhibit...going to Tract
21 17B, do we have the same partial as opposed to full ownership
22 difference that we just discussed?

23 A. Yes.

24

--

1 Q. And is that why the percentages differ?

2 A. Yes.

3 Q. And what amount are you asking be disbursed
4 from the escrow account associated, or what percentage from
5 the escrow account associated with 17B?

6 A. 2.41094%.

7 Q. Okay, and that would be divided in half and
8 paid one-half to the Levisa and one-half to BPC, correct?

9 A. Yes.

10 Q. And the difference between the 2.41094% and
11 the 3.86705% would remain in escrow with regard to Tract 17B?

12 A. Yes.

13 Q. With regard to Tract 17C, what's the total
14 percentage that would come out of escrow?

15 A. 0.94872%.

16 Q. And that would then be divided in half and
17 paid one-half to Levisa and one-half to BPC, correct?

18 A. Yes.

19 Q. Okay. And the difference between Levisa's
20 interest and Buchanan Production Company's interest as
21 reported on Exhibit EE would remain in escrow with regard to
22 17C?

23 A. Yes.

24

--

1 Q. With regard to 17D, what's the percentage
2 that you're asking the Court to order to be disbursed?

3 A. 3.82122%.

4 Q. And that percentage would then come out on a
5 50/50 basis with half being paid to Levisa and half being
6 paid to BPC?

7 A. Yes.

8 Q. And the difference again between Buchanan
9 Production's partial undivided interest in the unit and
10 Levisa's larger interest would remain in escrow with regard
11 to 17B?

12 A. Yes.

13 Q. 17E, what percentage are you asking be paid
14 out of the escrow account?

15 A. 1.74161.

16 Q. And one-half of that would then go directly
17 to Levisa and the other half would go to Buchanan Production?

18 A. Yes.

19 Q. And, again, the difference between Buchanan
20 Production Company's undivided interest in Tract 17E and
21 Levisa's greater interest, that difference would remain in
22 escrow with regard to 17E?

23 A. Yes.

24

--

1 Q. 17F, what percentage would come out?

2 A. 6.08034%.

3 Q. And that would be then divided in half and
4 half paid to Levisa and half paid to BPC?

5 A. Yes.

6 Q. And then again, we've got a differential
7 here. Would it be true that the greater...the difference
8 between the greater interest of Levisa Coal and the less
9 interest of Buchanan Production, that percentage and the
10 amount resulting from that percentage would remain in the
11 escrow account with regard to 17F?

12 A. Correct.

13 Q. Okay. 17G, we have what percentage coming
14 out?

15 A. 7.19386.

16 Q. Okay. And that would be divided in half
17 again with half of that percentage and the money associated
18 with that percentage going to Levisa and the other half going
19 to Buchanan Production?

20 A. Correct.

21 Q. And, again, the difference between Levisa's
22 greater interest and BPC's smaller interest, that percentage
23 of the money would remain in the escrow account?

24

--

1 A. Right.

2 Q. With regard to Tract 18, what percentage of
3 the dollars in the escrow account are we requesting be
4 disbursed?

5 A. 9.99246.

6 Q. And, again, that would be distributed one-
7 half of that percentage to Levisa and one-half to Buchanan
8 Production?

9 A. Yes.

10 Q. And in this instance, there is no retainage
11 or difference in the entire sums attributable to Tract 18 are
12 coming out?

13 A. Right.

14 Q. You gave notice to these people, right?

15 A. Yes.

16 Q. Okay. Have...have you...do each of these
17 companies...I guess we're just dealing with two companies,
18 did these...have these two companies, to your knowledge,
19 entered into written split agreements?

20 A. Yes.

21 Q. Okay. And do those split agreements require
22 or dictate a 50/50 division?

23 A. Yes.

24

--

1 Q. That's all I have with regard to this.

2 MASON BRENT: Any questions from the Board?

3 SHARON PIGEON: What is in this to show us?

4 MARK SWARTZ: It's missing a column, which is
5 why---

6 ANITA DUTY: Well, actually what...the Levisa Coal
7 Company is divided out into several owners. I think they
8 request that we send individual checks instead of sending
9 Levisa one check and then somebody distribute it
10 individually. So, what I need to do is submit an owner
11 percentage that would, you know, add up to the percentage
12 that we asked for disbursement for.

13 SHARON PIGEON: So, you're going to revise this
14 Exhibit?

15 ANITA DUTY: I'm going to add an extra column in
16 here so we'll know that like they're one-half or one-twelfth
17 or whatever, what their percent of escrow would be instead of
18 as a whole number just for Levisa.

19 SHARON PIGEON: You will call that Exhibit
20 number...because this is what you want the escrow agent to
21 prepare checks from.

22 MARK SWARTZ: No.

23 SHARON PIGEON: No?
24
~

1 MARK SWARTZ: Well, if you're going to pay them
2 directly we haven't given that percentage yet.

3 ANITA DUTY: Well, no that's what I'm saying. We
4 need to revise this. We can't use the one I gave you. I
5 just realized that when I was---

6 MARK SWARTZ: Right. We need to modify this so the
7 escrow agent can use it. It's missing a column that would be
8 attributable to the piece of the 50% that goes to Levisa
9 collectively that goes to the owners in Levisa. That's the
10 column that we need to supplement this.

11 SHARON PIGEON: And my question is, is the order to
12 direct the escrow agent to pay Levisa Coal or to pay Meredith
13 and Richard and Catherine---?

14 MARK SWARTZ: The folks in accord with the---

15 SHARON PIGEON: So, we don't have that information?

16 MARK SWARTZ: You don't have that column. You're
17 going to...we're going to file that as a supplemental
18 exhibit, if that's okay with you all. I mean, it will add up
19 to the percentages---

20 SHARON PIGEON: That you gave us.

21 MARK SWARTZ: ---that we've given you. I mean, the
22 half. But when we were sitting there enjoying the
23 festivities this morning, we noticed we were missing a
24

1 column. But you have that information, you just haven't---.

2 SHARON PIGEON: We have the owners' fractional
3 interest in the one column.

4 ANITA DUTY: Right. And I just need to take
5 that---.

6 MARK SWARTZ: And make a percentage.

7 SHARON PIGEON: And you're going to do us the good
8 service of providing that figure.

9 MARK SWARTZ: Right. And then making sure that it
10 adds up to the total percentages so that the rounding doesn't
11 cause some problem.

12 ANITA DUTY: Because actually each one of these
13 individual people signed individual royalty splits, and not
14 just Levisa. That's just how it was originally pooled is
15 just Levisa.

16 MASON BRENT: Okay. Do we have a motion to approve
17 the disbursement subject to the submission of a more in-depth
18 information to whom we're disbursing.

19 DONALD RATLIFF: So moved, Mr. Chairman.

20 MASON BRENT: Do we have a second.

21 BILL HARRIS: Second.

22 MASON BRENT: Any further discussion?

23 (No audible response.)

24

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1 MASON BRENT: All in favor, signify by saying yes.
2 (All members signify by saying yes.)
3 MASON BRENT: Opposed, say no.
4 (No audible response.)
5 MASON BRENT: Then you have approval.
6 MARK SWARTZ: Thank you.
7 MASON BRENT: The next item on our agenda, item
8 number ten, is a petition from CNX Gas Company, LLC for
9 pooling of coalbed methane unit BB-120. This is docket
10 number VGOB-04-0518-1287. I'd ask all parties interesting in
11 addressing the Board on this matter to come forward at this
12 time.
13 MARK SWARTZ: Mark Swartz and Les Arrington.
14 MASON BRENT: All right, let the record reflect
15 there are no others. You may proceed.
16 MARK SWARTZ: If you would consider calling the
17 next item on the docket, which is another Middle Ridge unit,
18 it might save us a tiny bit of time.
19 MASON BRENT: Okay, I will also call at this time
20 agenda item number eleven, which is a petition from CNX Gas
21 Company, LLC for pooling of coalbed methane unit BB-121.
22 This is docket number VGOB-04-0518-1288. I'd ask all parties
23 interested in addressing the Board on this matter to come
24

1 forward at this time.

2 MARK SWARTZ: Mark Swartz and Les Arrington.

3 MASON BRENT: Okay, let the record reflect there
4 are no others. You may proceed.

5 MARK SWARTZ: Need to get Les sworn in here, I
6 guess.

7 (Leslie K. Arrington is duly sworn.)

8

9 LESLIE K. ARRINGTON

10 having been duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. SWARTZ:

14 Q. What's your name?

15 A. Leslie K. Arrington.

16 Q. Do you work for CNX?

17 A. CNX Gas Company, LLC.

18 Q. Do you have a title that you're prepared to
19 share with us today, unlike Anita?

20 A. Manager of permitting and environmental.

21 Q. Okay. Were you the person that signed the
22 notices of hearing and the applications?

23 A. Yes.

24

--

1 Q. And were those notices and applications
2 either prepared by you or under your supervision?

3 A. Yes, they were.

4 Q. Okay. With regard to these two
5 applications, BB-120 and BB-121, do you want to add or
6 subtract any respondents today?

7 A. BB-120 no, and 121 no.

8 Q. Okay. What did you do to notify the
9 respondents, and there was quite a list, in regard to BB-120
10 and then the two folks on BB-121 of the hearing today?

11 A. Yes, we mailed by certified mail return
12 receipt requested on April the 16th, 2004. BB-120 was
13 published in the Bluefield Daily Telegraph on April the 26th
14 of 2004; and April the 27th, 2004 for BB-121.

15 Q. Okay. And these...both of these units are
16 Middle Ridge I units, is that correct?

17 A. Yes, they are.

18 Q. And they both contain 58.74 acres?

19 A. That's correct.

20 Q. You've got well plats attached to each
21 applications, which show the drilling window and show the
22 location of the proposed well, or actually these wells may be
23 drilled, and their...in both cases you're proposing one frac
24

1 well and in both cases that well is, in fact, in the window?

2 A. It is.

3 Q. Okay. The applicant in both cases is CNX
4 Gas Company, LLC, is that correct?

5 A. Yes, it is.

6 Q. Is that company a Virginia General
7 Partnership?

8 A. Yes, it is.

9 Q. Is it a wholly owned indirect subsidiary of
10 Consol Energy, Inc.?

11 A. Yes, it is.

12 Q. Is CNX authorized to do business in the
13 Commonwealth?

14 A. Yes, it is.

15 Q. In both of these applications, is there a
16 request that a designated operator be appointed?

17 A. Yes, it is.

18 Q. And who is it that the applicant is
19 requesting be designated operator if there's an order
20 entered?

21 A. CNX Gas Company.

22 Q. And in that regard, has CNX registered with
23 the DMME and does it have a blanket bond on file?

24

--

1 A. Yes, it does.

2 Q. And is CNX authorized to do business in the
3 Commonwealth?

4 A. Yes, it is.

5 Q. Okay. And you've already indicated that you
6 don't want to add or dismiss any people. So, can I assume
7 that you have listed in the notice of hearing and Exhibit B-3
8 all of the folks you're seeking to pool today?

9 A. Yes, we are.

10 Q. Okay. With regard to lease terms, obviously
11 you've leased quite a few folks in both of these units. What
12 are the terms that you generally offer for coalbed methane?

13 A. Coalbed methane lease is a standard lease is
14 a dollar per acre per year with a five year paid up term with
15 a one-eighth production royalty.

16 Q. And would you recommend those terms to the
17 Board to be inserted in any order it might enter with regard
18 to pooling these units in terms of how to deal with folks who
19 are deemed to have been leased?

20 A. Yes, we would.

21 Q. Okay. Turning to BB-120 for the moment,
22 okay, would you tell the Board what the interests are that
23 you have acquired and what it is that you're seeking to pool?

24

--

1 A. Yeah. BB...unit BB-120, we've acquired
2 92.9148% of the coal owners' claim to coalbed methane;
3 92.7956% of the oil and gas owners' claim to coalbed methane.
4 We're seeking to pool 7.0852% of the coal owners' claim to
5 coalbed methane; and 7.2044% of the oil and gas owners' claim
6 to coalbed methane.

7 Q. Have you prepared and filed a well cost
8 estimate?

9 A. Yes, we have.

10 Q. And what are the estimated costs?

11 A. The cost is \$259,156.16. It was drilled to
12 a total depth of 2,434 feet.

13 Q. And the permit?

14 A. Permit number is 5539.

15 Q. Okay, now this is...this Exhibit C that
16 we're looking at here with regard to well costs actually
17 contains both actual costs and estimated costs, is that
18 correct?

19 A. Yes, the actuals are in bold.

20 Q. I assume then that this well has been
21 drilled?

22 A. It has been drilled. It's still under
23 construction.

24

--

1 Q. Okay. Okay, now this unit, there's going to
2 be an escrow requirement, right?

3 A. Yes, for numerous reasons.

4 Q. Okay. It looks like in...and I'll sort of
5 break this out a little bit, in Tract 2 we have some unknown
6 and unlocateable people and we also have a title issue?

7 A. That's correct.

8 Q. In Tract 4 we have an address unknown issue
9 and some title issues?

10 A. Correct.

11 Q. And then just with regard to straight
12 conflicts, we would also have an escrow requirement in Tracts
13 2, 4, again, and also 10?

14 A. 10.

15 Q. Okay. And there's an Exhibit E that's
16 attached that addressed the conflicts?

17 A. It does.

18 Q. And then from looking at the addresses and
19 the other issues and the bore, you know, we can...we can
20 determine the titles, correct?

21 A. Correct.

22 Q. And I believe that there are...were also
23 some folks who entered into split agreements here?

24

--

1 A. There was.

2 Q. And have you listed the people who at the
3 present time have split agreements in an Exhibit EE?

4 A. Yes, we have.

5 Q. Turning to the application for BB-121, what
6 are the interests that you have acquired and what are you
7 seeking to pool?

8 A. We have acquired 83.7620% of the coal, oil
9 and gas owners' claim to coalbed methane. We're seeking to
10 pool 16.2380% of the coal, oil and gas owners' claim to
11 coalbed methane.

12 Q. And, again, did you prepare a well cost
13 estimate here?

14 A. Yes, we did.

15 Q. Okay, and what's the estimate and so forth?

16 A. Yes. It was \$246,636.82, TD of 2585, permit
17 number is 5505.

18 Q. Now, in this unit there's an Exhibit E,
19 which requires escrow because of conflicts?

20 A. Correct, Tract 1D.

21 Q. And you also have a couple of folks who have
22 entered into a split agreement and you've identified them in
23 Exhibit EE, is that correct?

24

--

1 A. Yes, we have.

2 Q. Okay. Is it your opinion that the plan of
3 development that CNX has for these two units as disclosed by
4 the application and the exhibits is a reasonable plan to
5 develop the coalbed methane within and under these Middle
6 Ridge units?

7 A. Yes, it is.

8 Q. And if you take a pooling order which deals
9 with the unleased respondents who are claimants or owners and
10 you couple that with the leases that you've already obtained,
11 will those two events serve to protect all of the owners and
12 claimants and their correlative rights?

13 A. Yes, it will.

14 Q. That's all I have.

15 MASON BRENT: Any questions of the witness?

16 (No audible response.)

17 MASON BRENT: Do you have anything further, Mr.
18 Swartz?

19 MARK SWARTZ: No.

20 MASON BRENT: Is there a motion to approve the
21 applications for BB-120 and BB-121?

22 DONALD RATLIFF: So moved.

23 DENNIS GARBIS: Motion for approval.
24
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1 DONALD RATLIFF: Second.

2 MASON BRENT: Motion and we have second...we have a
3 second. Any further discussion?

4 (No audible response.)

5 MASON BRENT: All in favor, signify by saying yes.
6 (All members signify by saying yes.)

7 MASON BRENT: Opposed, say no.
8 (No audible response.)

9 MASON BRENT: You have approval. In an effort to
10 be considerate, I'll stop here and ask if anybody needs to
11 take a break before the last two items.

12 BILL HARRIS: I do.

13 MASON BRENT: We'll take just a five minute break.

14 MARK SWARTZ: Okay.

15 MASON BRENT: Truly a five minute break.
16 (Off record.)

17 MASON BRENT: Let's get back on the record and see
18 if we can't wind up here. The next item on the agenda is
19 agenda item number twelve, which is a petition from CNX Gas
20 Company, LLC for creation and pooling of conventional gas
21 unit TA-52, docket number VGOB-04-0518-1289. I'd ask all
22 parties interested in addressing the Board on this matter to
23 come forward at this time.

24

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1 MARK SWARTZ: Mark Swartz and Les Arrington.

2 MASON BRENT: Okay, the record will reflect there
3 are no others. You may proceed.

4 MARK SWARTZ: I would like if I could to
5 incorporate the information with regard to CNX and with
6 regard to the standard lease terms from the immediately prior
7 hearings so I don't have to repeat---.

8 MASON BRENT: That will be incorporated.

9 MARK SWARTZ: Thank you.

10

11 LESLIE K. ARRINGTON

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. SWARTZ:

14 Q. Les, could you state your name for us,
15 again?

16 A. Leslie K. Arrington.

17 Q. And you do work for...still work for CNX?

18 A. Yes, I do.

19 Q. Okay. Did you sign the notice of hearing
20 and application with regard to TA-52?

21 A. Yes, I did.

22 Q. And did you either prepare the applications
23 and exhibits or did you have someone under your supervision

24

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1 prepare them?

2 A. Yes.

3 Q. This is a convention...this is a CBM unit,
4 correct?

5 A. Correct.

6 Q. But it's under statewide spacing rules?

7 A. It is.

8 Q. And I think, if my math is correct and one
9 of the exhibits, I think Exhibit E, for example, indicates
10 this is a 41.66 acre circular statewide unit?

11 A. Yes, it is.

12 Q. Okay. And you have essentially followed the
13 rules and you've put the well in the middle of the circle?

14 A. Yes, we have.

15 Q. And you've shown that on your plat, correct?

16 A. Yes.

17 Q. What...what...what did you do to tell people
18 that we were going to have a hearing today?

19 A. We mailed by certified mail return receipt
20 requested on April the 16th. We published it in the
21 Bluefield Daily Telegraph on April the 28th of 2004.

22 Q. Okay, do you want to add anybody as a
23 respondent today?

24

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1 A. No.

2 Q. Okay. Do you want to dismiss some people?

3 A. Yes, we do.

4 Q. Okay, now the exhibits that you passed out
5 today with regard to this have an Exhibit B-2, is that
6 correct?

7 A. It does.

8 Q. And does B-2 list the people that you would
9 ask be dismissed as respondents and give a reason for that
10 dismissal?

11 A. Yes. We'd like to dismiss a Shirley A.
12 Davis and a Mary Reba Hess and both of those parties have
13 been leased.

14 Q. So, there are two people in two tracts?

15 A. Yes.

16 Q. Okay. Then you've got a revised Exhibit B-
17 3. Is it true that the only change between the B-3 that was
18 filed originally with the application and the one you're
19 filing today as a revised exhibit is simply to account for
20 the dismissal?

21 A. Yes.

22 Q. And with regard to Exhibit A, page
23 two...with regard to Exhibit A, page two, has that been
24

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1 revised because you've leased more people and you need to
2 pool less of an interest?

3 A. That's correct.

4 Q. Okay. Let's turn to revised A, page two,
5 which is close to the end of the exhibits you've passed out
6 today. Now, accounting for the folks you've leased since
7 you've filed, what is the interest that you've acquired and
8 what are you seeking to pool?

9 A. We've acquired 100% of the coal owners'
10 claim to coalbed methane; 97.9958% of the oil and gas owners'
11 claim to coalbed methane. We're seeking to pool 2.0042% of
12 the oil and gas owners' claim to coalbed methane.

13 Q. Okay. You've got a revised Exhibit E, which
14 I assume requires escrow, correct?

15 A. Yes, it does.

16 Q. Okay. And the tracts that require escrow
17 because of conflicts are which tracts?

18 A. 2A, B and C.

19 Q. Okay. And that's the only reason for
20 escrow?

21 A. Yes.

22 Q. And in this situation there are no owners
23 that we're aware of that have entered into royalty split

24

--

1 agreements. So, we don't have an Exhibit EE, correct?

2 A. Correct.

3 Q. Turning now to the revised plat, what went
4 on there?

5 A. Yes, we had a tract identification that was
6 incorrect. We have corrected that.

7 Q. Do you recall which tract it was?

8 A. I believe it was Tract 2C.

9 Q. Okay. So, you've got...so the revised plat
10 doesn't change any percentages, it just corrects an ID?

11 A. Correct.

12 Q. And would that be the reason why you've got
13 a revised tract identification page?

14 A. Yes, it is.

15 Q. Okay. Turning to the original application
16 that you filed with regard to TA-52, did you provide the
17 Board with a well cost estimate?

18 A. Yes, we did.

19 Q. And what was that estimate?

20 A. The cost is \$228,061.32, drilled to a TD of
21 2335, permit number is 5535.

22 Q. Okay, and it looks like all of the costs on
23 this are estimated?

24

--

1 A. Quite a bit...the majority of it is
2 estimated on this. Yes, it is.

3 Q. Okay. Who is the applicant with regard to
4 the TA-52 application?

5 A. CNX Gas Company.

6 Q. Okay. And who is it that the applicant is
7 requesting be appointed designed operator if the application
8 is approved?

9 A. CNX Gas Company.

10 Q. Now, in this instance, because this is
11 statewide unit, we're also asking that the order create the
12 unit that's shown---

13 A. Create, yes, sir.

14 Q. ---on the revised plat---

15 A. That's correct.

16 Q. ---in addition to pooling the list of
17 applicants, which now really we need to be looking at revised
18 Exhibit B-3, the shorter list?

19 A. Yes.

20 Q. Is the plan of development of this coalbed
21 methane unit under statewide rules as disclosed by the
22 application and the exhibits attached thereto a reasonable
23 plan in your opinion?

24

--

1 A. Yes, it is.

2 Q. And if we couple the leases that you've been
3 able to obtain from owners and claimants with a pooling
4 order, would those two events serve to protect the claims and
5 interest of all people having correlatives rights in this
6 unit?

7 A. Yes, it will.

8 Q. That's all I have.

9 MASON BRENT: Any questions of the witness?

10 BILL HARRIS: Mr. Chairman.

11 MASON BRENT: Mr. Harris.

12 BILL HARRIS: I was wondering about the plat. I
13 understand there's a difference in the two Exhibit As, but I
14 can't...I don't seem to see a difference. The 2C, I think,
15 is what you indicated.

16 LESLIE K. ARRINGTON: So, you're looking at the
17 tract IDs is what you're speaking to?

18 BILL HARRIS: Yes.

19 LESLIE K. ARRINGTON: Yes. The problem with the
20 tract ID was we had...let me look back just to the comment.

21 MASON BRENT: No, his question---.

22 BILL HARRIS: No, I'm actually looking at---.

23 MASON BRENT: ---...his question was he sees no
24

--

1 difference in Exhibit A, but there wouldn't be.

2 MARK SWARTZ: The map.

3 BILL HARRIS: The map.

4 SHARON PIGEON: The map.

5 MASON BRENT: It's just...it's just an
6 identification.

7 LESLIE K. ARRINGTON: Yes, tract identification.
8 The plat is the same. It's just the tract identifications.

9 BILL HARRIS: Well, I'm still...I see 2C and 2D.

10 LESLIE K. ARRINGTON: Yes, sir. Okay, I gotcha.
11 Okay, if you'll look at Tract 2C...let me look back to see
12 exactly what it did say on the original. Tract 2C...yes, if
13 you'll look at Tract 2C on the original tract
14 identifications, it says "Joseph McCall surface and all
15 minerals except coal".

16 BILL HARRIS: Yes.

17 LESLIE K. ARRINGTON: Okay. If you'll come back to
18 the one we have just---

19 BILL HARRIS: Okay. Danny Griffith---

20 LESLIE K. ARRINGTON: Yes.

21 BILL HARRIS: ---is all minerals. Okay, I see
22 that.

23 LESLIE K. ARRINGTON: Yes.

24

--

1 MARK SWARTZ: But to go to the question---.

2 BILL HARRIS: The actual---.

3 MARK SWARTZ: ---you asked, I think you're probably
4 right.

5 BILL HARRIS: Yeah.

6 MARK SWARTZ: What he's really asking you is if you
7 look at the two plats with regard to Tract 2C, they appear to
8 be identical.

9 LESLIE K. ARRINGTON: Oh, and they are.

10 MARK SWARTZ: Okay.

11 BILL HARRIS: Okay.

12 LESLIE K. ARRINGTON: The tract is the same tract.
13 We just had them identified incorrectly.

14 BILL HARRIS: Okay.

15 MARK SWARTZ: Okay, so the change---.

16 SHARON PIGEON: So, we don't need the revised plat.

17 BILL HARRIS: They were dated differently and
18 everything. They're essentially the same document even
19 though they have different stamps. I mean, they have the
20 Claude Morgan is 4-14-0---.

21 LESLIE K. ARRINGTON: Yes, the plat is the same.

22 BILL HARRIS: Okay.

23 LESLIE K. ARRINGTON: It's the tract

24
~

1 identifications---.

2 BILL HARRIS: Okay.

3 LESLIE K. ARRINGTON: ---that's attached to them
4 that's different. That is correct.

5 BILL HARRIS: Okay.

6 MASON BRENT: Any other questions?

7 (No audible response.)

8 MASON BRENT: Do we have a motion for approval?

9 DONALD RATLIFF: Move to approve, Mr. Chairman.

10 MASON BRENT: Have a motion to approve. Do we have
11 a second?

12 BILL HARRIS: Second.

13 MASON BRENT: Do we have any further discussion?

14 (No audible response.)

15 MASON BRENT: All in favor, signify by saying yes.

16 (All members signify by saying yes.)

17 MASON BRENT: Opposed, say no.

18 (No audible response.)

19 MASON BRENT: You have approval. The last item is
20 the one we'll skip to now, item number sixteen, which is a
21 petition from CNX Gas Company, LLC for a well location
22 exception for proposed well 25445. This is docket number
23 VGOB-04-0518-1293. I'll ask all parties that are interested

24

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1 in addressing the Board on this matter to come forward at
2 this time.

3 MARK SWARTZ: Mark Swartz and Les Arrington.

4 MASON BRENT: Let the record reflect there are
5 others. You may proceed.

6 MARK SWARTZ: Mr. Chairman, this is an application
7 for a location exception. If you go to the plat, we can kind
8 of get you all focused. There is a list of wells and
9 distances in sort of the center of the page. The thing that
10 we're concerned about is PMCTC-9, which is the last on that
11 list, is a well that is 2,481.33 feet away. The spacing
12 requirement, absent an exception, is 2500 feet. So, we
13 are...we are about 19 feet of so out of compliance with the
14 general rule. I'll get in a moment to Les in terms of why we
15 would ask that you accommodate us. But, you know, it's an
16 order of a magnitude that's pretty minimal.

17

18 LESLIE K. ARRINGTON

19 DIRECT EXAMINATION

20 QUESTIONS BY MR. SWARTZ:

21 Q. Les, could you...and if you need to refer to
22 the map you've just, of course, passed out, could you explain
23 to the Board why it is that we're seeking this variance here?

24

--

1 A. The variance is being requested due to a
2 typographic problem. We are up on a ridge. It's just in a
3 relatively tight area. Really the only location to get that
4 well in to kind of meet the spacing requirements.

5 Q. Okay. Now, obviously these...the map, the
6 other thing that we wanted to show you is there's just an
7 infinitesimal overlap between the units. Is it your
8 intention to pay, you know, the overlap twice?

9 A. Yes, sir.

10 Q. Okay. That's all I have in this regard.

11 MASON BRENT: Who owns the property, the surface?

12 LESLIE K. ARRINGTON: 100% of the well that we're
13 speaking to here is fee property owned by Tazewell Coal and
14 Iron.

15 MASON BRENT: Any questions from the Board?

16 (No audible response.)

17 MASON BRENT: Do we have a motion to approve the
18 location exception?

19 DENNIS GARBIS: Motion to approve.

20 BILL HARRIS: Second.

21 MASON BRENT: I have a motion to approve and a
22 second. Any further discussion?

23 (No audible response.)

24

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1 MASON BRENT: All in favor, signify by saying yes.
2 (All members signify by saying yes.)
3 MASON BRENT: Opposed, say no.
4 (No audible response.)
5 MASON BRENT: Okay, you have approval.
6 MARK SWARTZ: Thank you very much. Appreciate
7 Dennis. You handicapped that pretty well.
8 DENNIS GARBIS: Got four minutes to spare. Very
9 well.
10 MASON BRENT: No, we're not quite through.
11 SHARON PIGEON: Oh, oh.
12 MASON BRENT: But I think we can do the last thing
13 in four minutes, Mr. Garbis. We need to approve the minutes.
14 DONALD RATLIFF: So moved.
15 DENNIS GARBIS: Second.
16 (Everyone laughs.)
17 MASON BRENT: I gather there are no changes to the
18 minutes. We have a motion to approve. We have a second.
19 All in favor, signify by saying yes.
20 (All members signify by saying yes.)
21 MASON BRENT: Opposed, say no.
22 (No audible response.)
23 MASON BRENT: I thank you, gentlemen and ladies.
24

1 DENNIS GARBIS: Three minutes to spare. Very well
2 done.

3 MASON BRENT: We're adjourned.

4

5

6 STATE OF VIRGINIA,

7 COUNTY OF BUCHANAN, to-wit:

8 I, Sonya Michelle Brown, Court Reporter and Notary
9 Public for the State of Virginia, do hereby certify that the
10 foregoing hearing was recorded by me on a tape recording
11 machine and later transcribed under my supervision.

12 Given under my hand and seal on this the 7th day of
13 June, 2004.

14

15

NOTARY PUBLIC

16

17 My commission expires: August 31, 2007.

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